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Conference Room, Suite 700
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1229

RIN 2590–AA21

Capital Classifications and Critical Capital Levels for the Federal Home Loan Banks

AGENCY: Federal Housing Finance Agency.

ACTION: Interim final rule; request for comments.

SUMMARY: The Federal Housing Regulatory Reform Act, Division A of the Housing and Economic Recovery Act of 2008 (HERA), requires the Director of Federal Housing Finance Agency (FHFA) to establish criteria based on the amount and type of capital held by a Federal Home Loan Bank (Bank) for each of the following capital classifications: adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized. In addition, HERA provides that the critical capital level for each Bank shall be the amount of capital that the Director by regulation shall require. HERA also sets forth prompt corrective action (PCA) authority that the Director has for the Banks. To implement these new provisions, the FHFA is adopting this interim final rule to define critical capital for the Banks, establish the criteria for each of the capital classifications identified in HERA and delineate its PCA authority over the Banks.

DATES: *Effective Date:* January 30, 2009.

Comment Date: Comments on the interim final rule must be received on or before April 30, 2009. For additional information, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit your comments on the proposed regulation, identified by regulatory information number (RIN) 2590–AA21 by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel and Christopher Curtis, Senior Deputy General Counsel, Attention: Comments/RIN 2590–AA21, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel and Christopher T. Curtis, Senior Deputy General Counsel, Attention: Comments/RIN 2590–AA21, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel and Christopher T. Curtis, Senior Deputy General Counsel, may be sent by e-mail at *RegComments@FHFB.gov.* Please include ''RIN 2590–AA21'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Julie Paller, Senior Financial Analyst, (202) 408–2842, and Anthony Cornyn, Senior Associate Director, (202) 408–2522, Division of Federal Home Loan Bank Regulation; or Thomas E. Joseph, Senior Attorney-Advisor, (202) 408–2512, Office of General Counsel, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

The FHFA invites comments on all aspects of the interim final rule, and will amend the rule as appropriate after taking all comments into consideration. FHFA requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on CD–ROM. Copies of all comments will be posted on the internet Web site at *https://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

A. Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, HERA, Public Law No. 110–289, 122 Stat. 2654 (2008), transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) and the oversight responsibilities of the Federal Housing Finance Board (FHFB or Finance Board) over the Banks and the Office of Finance (which acts as the Banks' fiscal agent) to a new independent executive branch agency, the FHFA. The FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See id.* at § 1102, 122 Stat. 2663–64. The Enterprises and the Banks continue to operate under regulations promulgated by OFHEO and the FHFB until the FHFA issues its own regulations. *See id.* at §§ 1302, 1313, 122 Stat. 2795, 2798.

Section 1141 of HERA states that the Director shall adopt regulations specifying the critical capital level for each Bank. *See id.* at § 1141, 122 Stat. 2730 (adopting 12 U.S.C. 4613(b)). In establishing this requirement, HERA provides that the Director shall take due consideration of the critical capital levels established for the Enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the Banks and the Enterprises. HERA further requires the Director to issue regulations establishing the critical capital levels for the Banks no later than the expiration of the 180 day period from the date that HERA was enacted.

In addition, section 1142 of HERA requires that the Director, no later than 180 days from its enactment, establish for the Banks the following four capital classifications and criteria for each classification: adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. *See id.* at § 1142, 122 Stat. 2730–32. HERA specifies that the criteria should be based on the amount and types of capital held by a Bank and the risk-based, minimum and critical capital levels for the Banks, taking due consideration of the capital classifications established for the Enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the Banks and the Enterprises. HERA also provides the FHFA prompt corrective action authority over the Banks and amends the Federal Housing Enterprises Safety and Soundness Act of 1992 (Safety and Soundness Act) so that specific mandatory or discretionary supervisory actions and restrictions under that statute would apply to any Bank determined to be undercapitalized, significantly undercapitalized or critically undercapitalized. *See id.* at §§ 1143–1145, 122 Stat. 2732–34. The general purpose for the PCA framework is to supplement the FHFA's other regulatory and supervisory authority and provide for timely and, in some situations, mandatory intervention by the regulator.

B. The Bank System Generally

The twelve Banks are instrumentalities of the United States organized under the Federal Home Loan Bank Act (Bank Act).[1] *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives; only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances or other products provided by a Bank. *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430b. Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions. *See* 12 U.S.C. 1427. Any eligible institution (generally a federally-insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. *See* 12 U.S.C. 1424; 12 CFR part 925. The Bank Act also requires each Bank to establish an affordable housing program (AHP) and contribute a specified portion of its previous year's net income to support that program. *See* 12 U.S.C. 1430(j). The purpose of the program is to enable Bank members to finance homeownership for low- or moderate-income households and the purchase, construction or rehabilitation of rental projects that benefit very low-income households.

As government-sponsored enterprises (GSEs), the Banks are granted certain privileges under federal law. In light of those privileges and their status as GSEs, the Banks typically can borrow funds at a modest spread over the rates on U.S. Treasury securities of comparable maturity. The Banks pass along a portion of their GSE funding advantage to their members—and ultimately to consumers—by providing advances and other financial services at rates that would not otherwise be available to their members. Some of the Banks also have acquired member asset (AMA) programs whereby they acquire fixed-rate, single-family mortgage loans from participating member institutions.

Consolidated obligations, consisting of bonds and discount notes, are the principal funding source for the Banks. The Office of Finance issues all consolidated obligations on behalf of the twelve Banks.[2] Although each Bank is primarily liable for the portion of consolidated obligations corresponding to the proceeds received by that Bank, each Bank is also jointly and severally liable with the other eleven Banks for the payment of principal of, and interest on, all consolidated obligations. *See* 12 CFR 966.9.

C. Capital Requirements for the Banks

The Bank Act defines the types of capital that the Banks must hold—specifically permanent and total capital—and establishes the Banks' minimum leverage and risk-based capital requirements. The Bank Act defines ''permanent capital'' as the amounts paid for Class B stock by members plus the Bank's retained earnings as determined in accordance with generally accepted accounting principles (GAAP), and defines ''total capital'' as permanent capital plus the amounts paid by members for Class A stock, any general allowances for losses held by a Bank under GAAP (but not any allowances or reserves held against specific assets or specific classes of assets) and any other amounts from sources available to absorb losses that are determined by regulation to be appropriate to include in total capital.[3] *See* 12 U.S.C. 1426(a)(5). However, because the Banks have no general allowances for losses and no additional sources have been determined to be appropriate to include in total capital, a Bank's total capital currently consists of its permanent capital plus the amounts, if any, paid by its members for Class A stock.[4]

The Bank Act provides that each Bank must hold total capital equal to at least 5 percent of its total assets, provided that in determining compliance with this ratio, a Bank's total capital shall be calculated by multiplying its permanent capital by 1.5 and adding to this product any other component of total capital. *See* 12 U.S.C. 1426(a)(2). *See also* 12 CFR 932.2(b). The Bank Act also requires that when total capital is calculated without application of the multiplier of 1.5, a Bank's total capital must equal at least 4 percent of its total assets.[5] *See* 12 U.S.C. 1426(a)(2)(B). *See*

[1] Each Bank is generally referred to by the name of the city in which it is located. The twelve Banks are located in: Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle.

[2] Since June 2000, the Banks have been issuing consolidated obligations under section 11(a) of the Bank Act (12 U.S.C. 1431(a)) and 12 CFR 966.2(b). Section 11(a) allows the Banks to issue debt subject to such rules, regulations and conditions imposed by their regulator while 12 CFR 966.2(b) allows the Banks only to issue consolidated obligations jointly and which are the joint and several obligation of all Banks. Prior to June 2000, the Finance Board issued consolidated obligations on which the Banks were jointly and severally liable on behalf of the Banks under section 11(c) of the Bank Act (12 U.S.C. 1431(c)). HERA amended section 11(c) of the Bank Act to remove the authority of the Banks' regulator to issue debt on behalf of the Banks. *See* § 1204(3)(B), Pub. L. No. 110–289, 122 Stat. 2785–86 (amending 12 U.S.C. 1431(c)).

[3] Class B stock is defined by the Bank Act as stock that is redeemable (subject to certain exceptions) five years after a member files notice of its intent to have the stock redeemed, while Class A stock is defined as stock redeemable (subject to the same exceptions) six months after a member files such a notice. *See,* 12 U.S.C. 1426(a)(5). *See also* 12 CFR 931.1. The Chicago Bank is the only Bank that has not converted to the Class A/Class B capital structure required under the Gramm-Leach Bliley Act (GLB Act) amendments to the Bank Act and thus, does not issue either Class A or Class B stock. Instead, the Chicago Bank still issues stock as defined in the Bank Act prior to its amendment by the GLB Act.

[4] Only two Banks, Topeka and Seattle, have issued both Class A and Class B stock. Nine Banks, Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Des Moines, Dallas, and San Francisco, issue only Class B stock, while, as already noted, the Chicago Bank has yet to issue either Class A or Class B stock.

[5] HERA defines these two leverage ratios as the ''minimum capital level'' for a Bank. *See* § 1111, Pub. L. No. 110–289, 122 Stat. 2666–67. As already noted, the Act states that the capital classifications for the Banks should be based on among other things ''the minimum capital * * * levels for the [B]anks.'' HERA also provides the Director with authority to require an increase in a Bank's minimum capital level by order, if the increase is to be temporary, and to promulgate regulations to

also, 12 CFR 932.2(a). Each Bank also must fulfill a risk-based capital requirement under which it must hold sufficient permanent capital to meet its market, credit and operations risk, as measured under current regulations.[6] *See* 12 U.S.C. 1426(a)(3) and 12 CFR 932.3.

The above requirements apply to the eleven Banks that have converted to the GLB Act capital structure, but do not apply to the Chicago Bank. The Chicago Bank is currently subject to capital requirements set forth in a 2007 Cease & Desist Order, as amended (Order), and remains the only Bank subject to capital requirements under § 966.3(a) of the rules.[7] *See* 12 CFR 966.3(a). Under the Order, the Chicago Bank must maintain a leverage ratio of the sum of the paid-in value of its capital stock, plus retained earnings, plus the face value of includable, outstanding subordinated debt instruments to total assets of at least 4.5 percent, and an aggregate amount of at least $3,600,000 in outstanding capital stock and includable subordinate debt. The includable amount of subordinated debt used to determine compliance with these requirements is 100 percent of the face value of the outstanding debt for the five years beginning on June 13, 2006, the date the debt was issued; thereafter, the included amount of outstanding debt shall be reduced by 20 percentage points annually.[8] The capital requirements under the Order, rather than those of § 966.3(a), currently are binding on the Chicago Bank.

In addition, the Bank Act imposes certain restrictions on Banks should they fail to meet any applicable capital requirement. These restrictions are separate and distinct from any restrictions or requirements imposed by the PCA provisions that apply to the Banks under HERA. Under the Bank Act, the Banks are prohibited from redeeming or repurchasing any stock if after doing so the Bank would fail to meet any minimum capital requirement. *See* 12 U.S.C. 1426(f). The Bank Act also prohibits a Bank from making any distribution of retained earnings if following such distribution the Bank would fail to meet any capital requirement. *See* 12 U.S.C. 1426(h)(3).

Finally, the Bank Act and regulatory provisions restrict Bank activity if the value of a Bank's stock is impaired by losses, whether or not the Bank meets its regulatory capital requirements. Specifically, the Bank Act prohibits a Bank from redeeming or repurchasing stock without the written permission of the Director if the Bank is experiencing, or is likely to experience, losses that will result in charges against capital. *See* 12 U.S.C. 1426(f). Current regulations define the phrase ''charges against capital'' to mean losses that would cause a Bank's total equity to fall below the par value of outstanding Bank stock on an other than temporary basis. *See* 12 CFR 930.1. Current regulations also prohibit a Bank from declaring or paying a dividend if the par value of the Bank's stock is impaired or is projected to become impaired after payment of the dividend. *See* 12 CFR 917.9(b).

D. Considerations of Differences Between the Banks and the Enterprises

Section 1201 of HERA requires the Director, when promulgating regulations relating to the Banks, to consider the following differences between the Banks and the Enterprises: cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. *See* § 1201 Public Law 110–289, 122 Stat. 2782–83 (amending 12 U.S.C. 4513). The Director also may consider any other differences that are deemed appropriate. In preparing this interim final rule, the FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors. The FHFA requests comments from the public about whether differences related to these factors should result in a revision to the interim final rule.

III. The Interim Final Rule

The interim final rule adds new subpart A of part 1229 to 12 CFR chapter XII, subchapter B. The new provision clarifies and provides details on how the FHFA intends to implement sections 1363 through 1369D of the Safety and Soundness Act, as these provisions have been amended and made applicable to the Banks by HERA. Where appropriate, the rule also incorporates and makes clear that restrictions on capital distributions established under the Bank Act and its implementing regulations apply to Banks that do not meet their capital requirements or have suffered from charges against their capital, in addition to any of the PCA restrictions applicable under the Safety and Soundness Act. *See e.g.*, 12 U.S.C. 1426(f) and (h)(3); 12 CFR 917.9(b). The provisions adopted under new subpart A of part 1229 apply only to the Banks. The capital classification and PCA provisions applicable to the Enterprises are contained at 12 CFR part 1777.

Analysis of the Interim Final Rule

Section 1229.1. Section 1229.1 sets forth definitions that will be applicable to subpart A of part 1229. Many of the terms are specific to the Banks. Most of these Bank-specific terms are defined with reference to the Bank Act or adopt definitions that are set forth in the Bank Act or that were previously adopted by the Finance Board in part 900 of its rules. 12 CFR part 900. Such terms include ''class A stock,'' ''class B stock,'' ''consolidated obligations,'' ''permanent capital'' and ''total capital.'' As discussed below, the definition of ''total capital,'' however, has been expanded from the definition in the Bank Act to ensure that it applies to all Banks and not just those that have converted to the GLB Act capital structure. *See* n.10, *infra.*

The definition for the term ''consolidated obligations'' in § 1229.1 has been altered slightly from the definition previously set forth in part 900 of the Finance Board's rules to reflect the fact the HERA amendment to section 11 of the Bank Act to remove authority from the Banks' regulator to issue debt on behalf of the Banks and to authorize the Banks, themselves, through their agent, the Office of Finance, to issue debt that would be the joint and several liability of all the Banks. *See* § 1204, Public Law 110–289, 122 Stat. 2785–86 (amending 12 U.S.C. 1431(b) and (c)). Nevertheless, the new definition recognizes that some of the outstanding consolidated obligations may have been issued by the Finance Board on behalf of the Banks, and it is meant to encompass all outstanding obligations issued under section 11 (either before or after its amendment by HERA) on which the Banks are jointly and severally liable, whether such obligations were issued by the Finance Board or jointly by the Banks.

The section also provides a definition of ''capital distribution'' that applies only to the Banks. The Safety and Soundness Act defines ''capital

require a permanent, higher minimum capital level for the Banks. *Id.*

[6] HERA amended the risk-based capital provision to provide the Director more flexibility to adopt new risk-based capital standards if desired. *See* § 1110, Pub. L. No. 110–289, 122 Stat. 2675–76 (amending 12 U.S.C. 1426(a)(3)). The current risk-based capital rules are contained at 12 CFR 932.4, 932.5, & 932.6.

[7] Once a Bank converts to the GLB Act capital structure and first complies with the capital requirements under Part 932 of the rules, it is no longer subject to § 966.3(a). *See,* 12 CFR 931.9(b).

[8] In effect, 80 percent of the face value of outstanding subordinated debt will be used to calculate compliance beginning June 13, 2012, 60 percent beginning June 13, 2013, etc. The subordinate debt comes due June 13, 2016. The face value of the subordinated debt issued by Chicago Bank was $1 billion, all of which remains outstanding.

distribution'' but only in terms of payments made by, or with respect to shares of, an Enterprise, so that the statutory definition would not apply to the Banks. *See* 12 U.S.C. 4502(2). Nevertheless, the definition of ''capital distribution'' adopted in § 1229.1 covers the same types of transactions covered by the statutory provision to the extent that such transactions are undertaken by the Banks. The definition also makes clear that the payment of dividends in the form of stock is considered a capital distribution for the Banks even though this type of transaction is specifically excluded from the statutory definition of ''capital distribution'' for the Enterprises. In this respect, the Bank Act and regulations applicable to the Banks prohibit a Bank from declaring or paying a dividend in any form if it does not comply with any of its capital requirements or would not do so after paying the dividend. *See* 12 U.S.C. 1426(h)(3); 12 CFR 931.4(b). To assure that these restrictions are captured in the PCA provisions, capital distributions for a Bank are defined to include dividends paid in the form of stock.

Section 1229.1 defines the ''minimum capital requirement'' with reference to section 6(a)(2) of the Bank Act (12 U.S.C. 1426(a)(2)), which establishes the minimum leverage and total capital requirement for Banks that have converted to the stock structure required by the GLB Act, as such requirements may be modified by the Director. This is consistent with HERA which specifically defines these two requirements as the ''minimum capital level'' for the Banks and allows the Director to raise these requirements either permanently or temporarily. *See* n.5, *supra.* In addition, the definition adopted in § 1229.1 states that the minimum capital requirement shall include ''any similar requirement [to those under section 6(a)(2) of the Bank Act] established for a Bank by regulation, order, written agreement or other action.'' This wording captures the fact that the Chicago Bank has not yet converted to the GLB Act capital structure and is therefore not subject to the leverage requirements in section 6(a)(2) of the Bank Act, although it is subject to leverage requirements under the Cease and Desist Order and applicable regulations. *See* 12 CFR 966.3(a).[9] The FHFA does not believe that HERA intended to exclude the Chicago Bank from PCA coverage just because it has not converted to the GLB Act capital structure, and thus has adopted a definition of ''minimum capital requirement'' that encompasses the leverage requirements applicable to Chicago.[10] The wording also recognizes that the Director could subject any Bank to higher minimum leverage requirements through an enforcement action and will assure that such requirements will be considered a minimum capital requirement for PCA purposes.

Section 1229.1 defines the phrase ''tangible equity'' to mean ''for a Bank, the paid-in value of its outstanding capital stock plus its retained earnings calculated in accordance with generally accepted accounting principles in the United States (GAAP) less the amount of any assets that would be intangible assets under GAAP.'' HERA adds references to ''tangible equity'' in certain PCA provisions but does not otherwise define the term.[11] *See* § 1143, Pub. L. No. 110–289, 122 Stat. 2732 (amending 12 U.S.C. 4615). The definition adopted is based on that used by banking regulators, adjusted to reflect the capital structure of the Banks. Other regulators generally include as ''tangible equity'' retained earnings, all forms of non-redeemable stock such as common stock and perpetual preferred stock less amounts of non-tangible assets. *See e.g.,* 12 CFR 565.3(f) (Office of Thrift Supervision (OTS) definition). Tangible equity generally does not include debt instruments such as subordinated debt.

The Banks, however, are only allowed to issue stock as defined in the Bank Act. The Bank Act specifically defines all Bank stock as redeemable, although the Bank Act also prohibits redemption of the stock if it is needed to maintain a Bank's compliance with its risk-based and minimum capital requirements. *See* 12 U.S.C. 1426. Given this statutorily-imposed capital structure, it does not seem reasonable to exclude redeemable stock from the definition of ''tangible equity'' for the Banks. Therefore, the definition of ''tangible equity'' in § 1229.1 includes the paid-in value of stock and retained earnings less intangible assets. As with the definition adopted by other regulators, this definition does not include subordinated debt instruments in ''tangible equity.''

Finally, as required by § 1141(a) of HERA, the FHFA establishes and defines the critical capital level for the Banks in this section. *See* § 1141(a), Public Law No. 110–289, 122, Stat. 2730 (adopting 12 U.S.C. 4613(b)). The critical capital level for a Bank is established as 2 percent of its total assets. This threshold is addressed below as part of the discussion of the criteria for classifying a Bank as ''critically undercapitalized.''

Section 1229.2. Section 1229.2 of the interim final rule generally implements the requirements of section 1364(d) of the Safety and Soundness Act, as that provision was amended and re-designated by § 1142 of HERA. As set forth in the statute, the interim final rule requires the Director to determine the capital classification of each Bank no less often than once every quarter. The rule makes clear, however, that the Director may make such a determination more often than once a quarter and that the Director can make a determination at any time for one or more Banks without making a determination for all Banks. The rule also requires that the quarterly determination be made in accordance with the procedural requirements set forth in § 1229.12 of the rule, a provision which implements § 1368 of the Safety and Soundness Act. 12 U.S.C. 4618. The rule also requires a Bank to provide written notification to the FHFA within ten calendar days of any event that causes its permanent or total capital to fall below the level necessary to maintain the capital classification provided in the most recent notice from, or determination by, the Director. For purposes of this requirement, a notice would include one provided to the Bank under § 1229.12(a) of this interim final rule. This requirement is similar to those currently imposed on the Enterprises, and the FHFA finds no reasons that the Banks should be treated differently in this respect. *See* 12 CFR 1777.21(b).

Section 1229.3. Section 1229.3 sets forth the criteria for classifying the Banks as adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized, as required by § 1142 of HERA. § 1142 Public Law No. 110–289, 122 Stat. 2730–31 (amending 12

[9] This aspect of the regulation only applies to the Chicago Bank and does not apply to any of the other Banks, all of which have converted to the GLB Act capital structure and made the transition to complying with the GLB Act's capital requirements. *See* 12 CFR 931.9(b)(1).

[10] Similarly, the definition of total capital in § 1229.1 states that for a Bank that has not issued either Class A or Class B stock, total capital ''will be the measure of capital used to determine compliance with its minimum capital requirement.'' This wording applies only to the Chicago Bank and recognizes that the Chicago Bank's regulatory total capital (used to meet its applicable leverage requirements) is defined by the current Order and by Finance Board resolution. *See* Fin. Brd. Res. No. 2006–06 (Apr. 18, 2006).

[11] The term ''tangible equity'' is used in a PCA provision added by HERA restricting asset growth for undercapitalized regulated entities. The term ''regulated entity'' is defined in HERA to mean any Enterprise or any Bank. *See* § 1002(a), Public Law No. 110–289, 122 Stat.2659 (adopting 12 U.S.C. 4502(20)). Section 1229.6(a)(4) of this interim final rule implements the provision restricting asset growth for undercapitalized Banks.

U.S.C. 4614). As required by HERA, these categories are defined in terms of the risk-based and minimum capital requirements established for the Banks under the Bank Act and other applicable law, after taking due consideration of the classifications established for the Enterprises. *Id.* The rule also makes clear that the criteria are only applicable to the extent that the Director has not exercised authority to reclassify the Bank based on factors other than the capital levels of the Bank, such as that provided in § 1142 of HERA and implemented in § 1229.4 of this rule. *See* § 1142 Public Law No. 110–289, 122 Stat. 2730–31 (adopting 12 U.S.C. 4614(c)).

Under the rule, a Bank will be adequately capitalized only if it holds sufficient capital to meet both its risk-based and minimum capital requirements.[12] This is consistent with the provision in HERA that the Banks' capital classifications be based on the amount and types of capital held by the Banks and the risk-based and minimum capital requirements for the Banks. It is also consistent with the general approach under existing Bank Act provisions that a Bank must remain in compliance with all its capital requirements, and that a Bank itself becomes subject to restrictions, similar to those under the PCA provisions of HERA, when it is not in compliance with any one of its capital requirements. *See* 12 U.S.C. 1426(c)(1)(D), (f)(1) and (h)(3).

The rule states that a Bank will be undercapitalized if it fails to meet any one of its minimum or risk-based capital requirements. This approach is slightly different from that established for the Enterprises under the Safety and Soundness Act, which provides that an Enterprise is undercapitalized only if it does not meet its total capital requirement. *See* 12 U.S.C. 4614(a)(2). As previously noted, the Bank Act already imposes restrictions on a Bank's activity when a Bank fails to comply with either the risk-based or minimum capital requirement that are similar to those imposed on undercapitalized Banks under these PCA provisions. Thus, it would appear reasonable to define an undercapitalized Bank by references to both risk-based and minimum capital requirements and conform the approach in this regulation to that generally mandated by the Bank Act.

The rule establishes the threshold at which the Bank would become significantly undercapitalized at 75 percent of the capital levels needed for the Bank to meet either its risk-based or minimum capital requirements. This threshold is reasonable given that the Banks have the obligation to adjust the amount of capital stock members are required to buy when they face a capital shortfall; a case where a Bank was facing a greater-than-25 percent shortfall in capital would suggest the Bank was having problems raising capital or was beginning to show serious structural or financial difficulties. The greater number of supervisory options available under the PCA provision with regard to significantly undercapitalized Banks would appear valuable in this case. At the same time, the threshold is still high enough that in most circumstances the Bank would have capital sufficient to operate safely, especially in light of the additional restrictions and safeguards that may be imposed under the PCA provisions, while action is taken to try to correct its capital problems. This threshold is also similar to how other banking regulators define the significantly undercapitalized category in their regulations. *See, e.g.,* 12 CFR 565.4(b)(4) (OTS regulation).

Finally, a Bank would be critically undercapitalized whenever its total capital is 2 percent or less of its total assets. The threshold equals one-half of the 4 percent minimum total capital requirement established for the Banks under § 6(a)(2)(B) of the Bank Act. This approach is broadly similar to that defining critical capital for the Enterprises under the Safety and Soundness Act, although the approach adopted in this rule recognizes that the Banks do not issue or guarantee mortgage-backed securities or hold significant off-balance-sheet items; no charges are added for these items. *See* 12 U.S.C. 4613(a) and 4614(a)(4); 12 CFR 1777.20(a)(4).[13] The FHFA also believes the two percent of total asset threshold is appropriate for the Banks. If a Bank's total capital reached this low level, it would indicate that the Bank was having serious problems raising additional capital from members either because a significant portion of the membership were no longer interested in, or were not in a financial condition to be capable of, doing business with the Bank or were no longer willing or able to buy capital stock to support that business. Such a situation, no matter what the cause, would suggest either that the Bank's cooperative business model was not working or that members were not capable of capitalizing a Bank and justify the intervention by the FHFA under the PCA provisions applicable to a critically undercapitalized regulated entity or other similar situations. The threshold adopted in this rule is similar to the critically undercapitalized category in the banking regulations. *See, e.g.,* 12 CFR 565.4(b)(5) (OTS regulation).

Section 1229.4. Section 1229.4 implements the authority provided in § 1142(a)(4) of HERA, allowing the Director discretionary authority to reclassify a Bank's capital classification for reasons other than the amount of capital held by a Bank, such as those related to the condition of the Bank or the quality of the assets or collateral held by a Bank. *See* § 1142 Public Law No. 110–289, 122 Stat. 2730–31 (adopting 12 U.S.C. 4614(c)).

This section of the interim final rule closely adheres to the text of the statutory provision. The grounds for reclassifying a Bank are set forth in § 1229.4(b) of the interim final rule. Under this provision the Director can reclassify the Bank upon a written determination that the Bank is engaging in conduct that could result in a rapid depletion of its capital, or that the value of collateral pledged to the Bank or the value of property subject to mortgages owned by the Bank has decreased significantly. The Director can also reclassify a Bank if the Director determines the Bank is in an unsafe and unsound condition. Before making this determination, however, the rule states that the Director will provide the Bank with notice and an opportunity for an informal hearing before the Director during which the Bank can present information or testimony about its

[12] The Chicago Bank is not yet subject to the risk-based capital provisions under section 6(a)(3) of the Bank Act. Further, there are no (and have not been) statutory or regulatory risk-based capital requirements applicable to a Bank that has not converted to the GLB Act capital structure. Thus, until the Chicago Bank completes its transition to the GLB Act capital structure, it will not have to meet the risk-based requirement for purposes of the capital classification—unless further regulatory or supervisory action result in the adoption of a risk-based capital requirement for it.

[13] Under both the Safety and Soundness Act and applicable regulations, an Enterprise would be critically undercapitalized if its core capital were less than the critical capital level. The term ''core capital,'' however, is not defined or used in the Bank Act or any regulation applicable to the Banks. An Enterprise's core capital is similar to total capital for a Bank in that each is used to meet a leverage type requirement. On the other hand, the Bank Act specifically requires that the Bank's permanent capital be used to meet its risk-based capital requirements while an Enterprise's total capital is used to meet its risk-based capital requirements. Thus, whenever comparisons need to be made between the types of capital held by the Banks and the core capital and total capital of the Enterprises or provisions in HERA implemented by this interim final rule refer to core capital and total capital of a regulated entity, these terms generally have been interpreted as or compared to, respectively, a Bank's total capital and permanent capital.

condition. The process contemplated is based on and similar to that used by other banking regulators before reclassifying regulated banks on similar grounds. *See* 12 CFR 308.202(a), 325.103(d) (Federal Deposit Insurance Corporation regulations); 12 CFR 565.8 (OTS regulations). Finally, the Director can reclassify a Bank if the Director has found, in accordance with § 1371(b) of the Safety and Soundness Act, that the Bank is engaging in an unsafe and unsound practice because the Bank's asset quality, management, earnings or liquidity were found to be less than satisfactory during the most recent examination and any deficiency has not been corrected.

As required by statute, § 1229.4(c) of the interim final rules provides that the capital reclassification of a Bank is subject to the notice and procedural requirements under § 1368 of the Safety and Soundness Act, as that provision is implemented by § 1229.12 of this rule. Section 1229.4(d) makes clear that any condition, action or inaction by a Bank that results in a reclassification of a Bank under this section can be the basis for a subsequent reclassification action, as long as the Bank has not rectified the original problem or condition. Finally, § 1229.4(e) states that nothing in § 1229.4 will prevent the Director from exercising any other authority available under the Bank Act, the Safety and Soundness Act or any other regulation to reclassify a Bank or take any other action against a Bank.

Section 1229.5. Section 1229.5 of the interim final rule implements the provision added by § 1142(a)(5) of HERA addressing capital distributions by adequately capitalized regulated entities. *See id.* (adopting 12 U.S.C. 4614(e)). The provision prohibits an adequately capitalized Bank from making a capital distribution if, after doing so, the Bank would be undercapitalized. The provision also makes clear that an adequately capitalized Bank cannot make any capital distribution if it would violate any restriction in section 6 of the Bank Act or any other applicable regulation.

Section 1142(a)(5) of HERA allows the Director to grant an exception to the new restriction on capital distributions and permit a regulated entity to redeem, repurchase or retire stock if such transaction is in connection with the issuance of additional shares or obligations in an equivalent amount to those shares retired, will reduce the regulated entity's financial obligations or otherwise improve its financial conditions. Section 1229.5(b) of the interim final rule implements this exception as applied to the Banks, but makes clear that any transaction permitted under this exception must be consistent with and not violate any restriction in the Bank Act or other regulation that prohibits redemption or repurchase of Bank stock.

Section 1229.6 and Section 1229.7. Sections 1229.6 and 1229.7 of the interim final rule implement § 1365 of the Safety and Soundness Act as amended by HERA, which sets forth the mandatory and discretionary actions applicable to a Bank classified as undercapitalized. *See* 12 U.S.C. 4615, as amended by § 1143, Public Law No. 110–289, 122 Stat. 2732–33. Section 1229.6(a) sets forth the mandatory actions that a Bank must take and the restrictions that are applied to a Bank once it is deemed to be undercapitalized. These provisions closely follow the wording in the statute. The regulation requires an undercapitalized Bank to submit a capital restoration plan that meets with the approval of the Director within the timeframe required under § 1229.11 of this regulation, and carry out all commitments made in that plan. The regulation also restricts an undercapitalized Bank's quarterly asset growth and its ability to engage in any new business activity or acquire any entity. The rule clarifies that for purposes of the restriction on asset growth, the calculation of a Bank's average total assets for a quarter will be based on the daily total assets held by the Bank in the quarter.[14] As required under the statute, § 1229.6(a) also prohibits an undercapitalized Bank from making any capital distribution that would cause it to become significantly or critically undercapitalized, but the regulation also makes clear that the undercapitalized Bank cannot make any capital distribution that would violate any additional restrictions in the Bank Act or other regulations related to the payment of dividends or the repurchase or redemption of stock.

Section 1229.6(b) implements the changes made by § 1143 of HERA which require the Director to reclassify an undercapitalized Bank as significantly undercapitalized if the Bank fails to submit a capital restoration plan which the Director can approve within the time limits established under the interim final rule or fails to implement any approved capital restoration plan in any material respect. Finally, § 1229.6(c) implements the statutory requirements that the Director monitor the undercapitalized Bank's condition and its compliance with the requirements and obligations imposed on it under the PCA provisions.

Section 1229.7 implements the provision in § 1143 of HERA which allows the Director the discretion to take any action with respect to an undercapitalized Bank which the Director may take pursuant to § 1366 of the Safety and Soundness Act against a significantly undercapitalized Bank, ''if the Director determines that such actions are necessary to carry out the purpose of this subtitle [C].'' § 1143(6), Public Law No. 110–289, 122 Stat. 2733 (amending 12 U.S.C. 4615(c)). The wording of § 1229.7 reflects the FHFA's belief that the purposes of the PCA provisions contained in subtitle C of HERA are to assure the safe and sound operations of a Bank, for both its own benefit and the benefit of its members and the financial system, and its compliance with its risk-based and minimum capital requirements within a reasonable period of time.[15] This provision of the rule also makes clear that, as required by § 1368 of the Safety and Soundness Act, the Director will provide notice to an undercapitalized Bank about any potential discretionary action under § 1299.7 and allow the Bank the opportunity, as set forth in § 1229.12(c) of this interim final rule, to provide information relevant to the proposed action before the Director makes a final determination.

Section 1229.8 and Section 1229.9. Sections 1229.8 and 1229.9 implement § 1366 of the Safety and Soundness Act as amended by HERA, which sets forth the mandatory and discretionary actions applicable to a Bank classified as significantly undercapitalized. *See* 12 U.S.C. 4616, as amended by § 1144, Public Law No. 110–289, 122 Stat. 2733–34. Section 1229.8 sets forth the mandatory actions and restrictions on activities that will apply to a Bank found to be significantly

[14] Each month, each Bank reports its daily average total assets held during that month. These reported figures are then used to calculate a quarterly average.

[15] Similarly, § 1143 of HERA allows the Director to exempt an undercapitalized Bank from the prohibition on its engaging in new business activities or acquiring other entities if among other conditions, the Director determines the ''proposed action will further purposes of this subtitle [C]'' and provides that the Director shall monitor the restrictions and requirement imposed on an undercapitalized Bank to determine whether they are achieving ''the purposes of this section [1143].'' These statutory provisions are implemented by § 1229.6(a)(5)(ii) and § 1229.6(c) of the interim final rule respectively. The wording employed for these two regulatory provisions reflects the FHFA's view that the purposes of the PCA provisions are to help to assure that a Bank will operate in a safe and sound fashion, for both its own benefit and the benefit of its members and the financial system, and return within a reasonable period of time to compliance with its risk-based and minimum capital requirements.

undercapitalized, while § 1229.9 sets forth discretionary actions that the Director may take with regard to any significantly undercapitalized Bank.

Sections 1229.8(a) and (b) of the interim final rule require a significantly undercapitalized Bank to submit a capital restoration plan consistent with the requirements of § 1229.11 of this rule, receive the Director's approval for this plan, and fulfill all terms, conditions, and obligations contained in the approved plan. Sections 1229.8(c) and (d) implement restrictions on the capital distributions that a significantly undercapitalized Bank may make. Specifically, § 1229.8(c) prohibits a significantly undercapitalized Bank from making any capital distribution if the distribution would result in the Bank becoming critically undercapitalized or would otherwise violate restrictions on the declaration or payment of a dividend or the repurchase or redemption of stock set forth in section 6 of the Bank Act or any other applicable regulation. To the extent that a capital distribution is not already prohibited by § 1229.8(c), § 1229.8(d) provides that the Bank can make the distribution only with the prior approval of the Director. The Director may provide such approval only upon a determination that the capital distribution will enhance the ability of the Bank to meet its capital requirements promptly, contribute to the long-term financial safety and soundness of the Bank or otherwise be in the public interest.

Finally, § 1229.8(e) and § 1229.8(f) of the interim final rule establish limits on the bonuses and compensation that a significantly undercapitalized Bank may pay to any executive officer. Section1229.8(e) prohibits a significantly undercapitalized Bank from paying any bonus to an executive officer without the prior written approval of the Director. For purposes of this provision, a bonus includes any amounts paid or accruing to the executive officer under any profit sharing arrangement established by the Bank. Section 1229.8(f) prohibits a significantly undercapitalized Bank from paying an executive officer at a rate of compensation that is higher than the average rate paid to that officer during the twelve month period immediately prior to the month the Bank became significantly undercapitalized, without first receiving the prior written approval from the Director. As set forth in HERA, the rule states that the average rate of compensation does not include bonuses or profit sharing paid or accruing to the officer during the twelve month period.[16] A definition for ''executive officer'' is provided in § 1229.1 of the interim final rule.

Section 1229.9 of the interim final rules sets forth the discretionary actions the Director may take with regard to a significantly undercapitalized Bank. Section 1229.9(a) provides that the Director shall carry out this section by taking any one or more of the listed action with regard to a significantly undercapitalized Bank. These actions can include requiring the Bank to reduce, or limit the growth of any obligation, class of obligation, asset or class of assets held by the Bank. The Director also can require a Bank to acquire new capital in such form and amount determined by the Director, which can include requiring the Bank to increase its retained earnings by specific amounts. The Director can also require a significantly undercapitalized Bank to modify, limit or terminate any activity that the Director determines creates excessive risk to the Bank.

Section 1229.9(a) also allows the Director to take actions to improve the management and corporate governance of a significantly undercapitalized Bank. Under this provision the Director may take any or all of the following actions: ordering the Bank to hold new elections for its board of directors under such procedures established by the Director at the time of the order, ordering the Bank to dismiss particular directors or executive officers, and/or ordering the Bank to hire qualified executive officers. As set forth in § 1144 of HERA, § 1229.9(a)(7) provides that the removal of a director or executive officer under this provision is separate and distinct from a removal action under § 1377 of the Safety and Soundness Act (12 U.S.C. 4636a) and shall not be subject to any procedural requirements adopted to implement § 1377. As with other discretionary actions taken under § 1229.9, however, removal of a director or executive officer under § 1229.9(a)(7) would be subject to the notice and procedural requirements applicable to supervisory actions set forth in § 1229.12. This section also makes clear that the Director may require the significantly undercapitalized Bank to get the Director's approval before hiring any new executive officer, whenever the Director has ordered the Bank to hire qualified executive officers.

Finally, section 1229.9(a) provides that the Director, in his or her discretion, may reclassify a significantly undercapitalized Bank as critically undercapitalized if a Bank fails to submit a capital restoration plan within the time frame required by regulation, to receive the Director's approval of such plan or to carry out any obligation under an approved plan. The provision makes clear that the Director may assert the stated grounds as a basis for reclassification to the critically undercapitalized category even if the same grounds previously formed the basis for reclassification of the Bank from undercapitalized to significantly undercapitalized, if the Bank has not acted to rectify the original problem.

Section 1229.9(b) provides that the Director may take actions not specifically listed elsewhere in § 1229.9, if the Director determines that such action will better help ensure the safe and sound operation of a significantly undercapitalized Bank and the Bank's prompt compliance with its minimum and risk-based capital requirements. This provision implements the part of § 1144 of HERA which allows the Director to require a significantly undercapitalized Bank ''to take any other action that the Director determines will better carry out the purpose of this section [1144].'' *Id.* (adopting 12 U.S.C. 4616(b)(7)). The wording adopted in § 1229.9(b) reflects the FHFA's belief, as noted above, that the purposes of the PCA provisions are to help ensure the safe and sound operations of the Banks and a Bank's prompt compliance with its required capital levels, and thus, § 1229.9(b) uses references to such goals to implement the quoted language of HERA.

Section 1229.10. Section 1229.10 of the interim final rule implements various provisions of § 1145 of HERA which relate to critically undercapitalized Banks. *See* § 1145(a), Public Law No. 110–289, 122 Stat. 2734–36 (amending 12 U.S.C. 4617). Under § 1229.10(a) of this rule, the Director is authorized to appoint the FHFA as conservator or receiver as soon as final action is taken to classify or reclassify a Bank as critically undercapitalized.

Section 1229.10(b)(1) of this rule requires the Director to make a determination at least once every 30 calendar days, beginning on the date a final determination is first made that a Bank is critically undercapitalized, as to whether the Bank's assets during the previous 60 calendar day period were less than the Bank's obligations, or the

[16] While the HERA provision also excludes stock options from the calculation of average compensation, the Banks do not provide stock options to their executive officers; nor can the Banks provide such options to officers as the Bank Act only allows member institutions to purchase Bank stock and prevents individuals from buying Bank stock. Thus, the interim final rule does not need to exclude stock options from the calculation of compensation for executive officers of a Bank.

Bank is not currently, or had not been during the previous 60 calendar day period, paying its debts as such debts became due. For purposes of this determination, the rule clarifies that a Bank's obligations include only that portion of outstanding consolidated obligations for which the Bank is primary obligor or for which the Bank has been ordered to make payments of principal or interest by the Director or for which the Bank is actually making such payments on behalf of another Bank. Similarly, a Bank's debts do not include any unpaid amounts that are subject of a *bona fide* dispute.

If the Director determines that a critically undercapitalized Bank's obligations are greater than its assets or the Bank has not been paying its debts, § 1229.10(b)(2) requires the Director immediately to appoint the FHFA as receiver for the Bank. The appointment of the FHFA as receiver under § 1229.10(b)(2) terminates any conservatorship established for the Bank and ends the requirement for future determinations by the Director under § 1229.10(b)(1) for the pendency of the receivership.

Section 1229.10(c) of the interim final rule provides that a Bank may seek judicial review of an action under § 1229.10(a) or § 1229.10(b)(2) to appoint the FHFA as conservator or receiver, as allowed under HERA. *See* § 1145(a), Public Law No. 110–289, 122 Stat. 2736 (adopting 12 U.S.C. 4617(a)(5)). Finally, § 1229.10(d) of the interim final rule makes clear that until the FHFA is appointed conservator or receiver of a critically undercapitalized Bank, the Bank is subject to all mandatory restrictions and obligations applicable to significantly undercapitalized Banks under the PCA provisions, any restrictions or obligations previously placed on the Bank by the Director under the PCA authority, or any restrictions or obligations imposed on the Bank by an approved capital restoration plan.

Section 1229.11. Section 1229.11 of the interim final rule implements § 1369C of the Safety and Soundness Act, as that provision is made applicable to the Banks by HERA, which sets forth the requirements for capital restoration plans that are required by various provisions of this interim final rule. *See* 12 U.S.C. 4622 (as amended by § 1145(b)(2), Public Law No. 110–289, 122 Stat. 2767). Section 1229.11(a) describes the minimum information that must be contained in each capital restoration plan. This information includes a description of any changes to members' stock purchase requirements that a Bank intends to make to raise capital. As already noted, the Bank Act specifically requires each Bank's board of directors to monitor the Bank's capital levels and adjust its member's stock purchase requirements to assure a Bank maintains compliance with all capital requirements. Given that a change in members' stock purchase requirements will be a major method for a Bank to raise capital, it is reasonable for the Bank to explain how it will adjust these requirements as part of its capital restoration plan.

Section 1229.11(b) of the interim final rule establishes that a Bank must submit a capital restoration plan within ten calendar days after the Bank learns that it is required to submit such a plan, but allows the Director to extend the deadline in writing if needed. The FHFA will consider that a Bank knows that it must submit a capital restoration plan if the Bank receives final notification that its capital classification is undercapitalized, significantly undercapitalized or critically undercapitalized, given that submission of a plan is mandatory in these situations, or if the Director otherwise informs the Bank that it must submit such a plan. While the Safety and Soundness Act provides that the Director may establish a deadline for submission of a capital restoration plan of no more than 45 days, it also allows the Director to establish a shorter deadline. The ten day period established in § 1229.11(b) appears reasonable given the need for a Bank to act promptly to restore its capital levels and the possibility that the Director can extend the deadline if needed. Ten calendar days for submission of a plan is also consistent with the deadline established for the Enterprises under current regulations, and the FHFA sees no reason why the Banks and the Enterprises should be treated differently with regard to this requirement. *See* 12 CFR 1777.23(a).

Section 1229.11(c) and (d) sets forth the requirements and deadlines for the Director's review of a capital restoration plan submitted by a Bank and for the Bank's submission of a new plan should the Director not approve the original submission. These provisions closely follow the requirements set forth in the Safety and Soundness Act. *See* 12 U.S.C. 4622(c) and (d). Section 1229.11(e) provides that the Director may approve amendments to a previously approved capital restoration plan if, after consideration of changes in market conditions or other relevant factors, the Director determines that the amendments are consistent with the Bank's achieving an adequately capitalized classification in a reasonable period of time and operating in a safe and sound manner.

Section 1229.11(f) of the interim final rule makes clear that a Bank is obligated to implement and fulfill all provisions of an approved capital restoration plan, and remains obligated under the provisions of an approved capital restoration plan until such provision is terminated as may be specifically stated in the plan or is otherwise amended or terminated in writing by the Director. Finally, § 1229.11(g) implements provisions added to the Safety and Soundness Act by § 1145 of HERA which provide that the Director may appoint the FHFA as conservator or receiver of a Bank if the Bank fails to submit an acceptable capital restoration plan within the time frame established under the regulations or materially fails to implement any provision or fulfill any obligation arising under an approved capital restoration plan. *See* § 1145(a), Public Law No. 110–289, 122 Stat. 2735 (adopting 12 U.S.C. 4617(a)(3)(J)(iii) and (iv)).

Section 1229.12. Section 1229.12 of the interim final rule implements the provisions of § 1368 of the Safety and Soundness Act as these provisions are made applicable to the Banks by HERA. *See* 12 U.S.C. 4618 (as amended by § 1145(b)(1), Public Law No. 110–289, 122 Stat. 2767). Section 1368 of the Safety and Soundness Act requires the Director to provide a Bank notice before finalizing any decision to classify or reclassify a Bank within a particular capital classification under § 1364 of the Safety and Soundness Act or before taking any discretionary action pursuant to the PCA authority set forth in §§ 1365 or 1366 of the Safety and Soundness Act and allow the Bank an opportunity to submit information that would be relevant to the final decision. The cited statutory provisions with regard to capital classification or reclassification and discretionary PCA authority are implemented by §§ 1229.2, 1229.4, 1229.7 and 1229.9 of this interim final rule.

Section 1229.12 adheres to the time frames and requirements set forth in the statute. It provides that a notice to classify or reclassify a Bank within a particular capital classification may be combined with the notice to require a Bank to take a particular action or adhere to a particular restriction under the Director's discretionary PCA authority. Additionally, the Director may combine a notice that the Bank has been classified in one capital classification category based on the amount of capital held or other factors with a simultaneous determination to reclassify the Bank to the next lower

category. The rule allows a Bank thirty calendar days from the date the Bank is provided initial notice of the proposed action to provide information to the Director that may be relevant to such action. It also provides that the Director may make a final determination with regard to the proposed action at the end of the comment period or after receipt of the information provided by the Bank, whichever is earlier. The provision requires the Director to provide written notice to the Bank of final decisions and the reasons for making such decisions. Consistent with section 1369D of the Safety and Soundness Act (12 U.S.C. 4623), the regulation also provides that any Bank that is not classified as critically undercapitalized may seek judicial review of a final action taken under §§ 1229.2, 1229.4, 1229.7 and 1229.9 of this interim final rule, in accordance with the procedures and requirements set forth in that statutory provision. The rule also provides that any final decision that a Bank take action, refrain from action or comply with any other requirement that was the subject of a notice issued under this section shall constitute an final order under the Safety and Soundness Act and can be enforced by the Director by application to the relevant United States district court or be the subject of an administrative enforcement action.

Issue for Further Consideration and Comment

The interim final rule adopts criteria defining the four capital classification categories specifically identified in, and made applicable to the Banks by, HERA. FHFA requests comments on all aspects of the interim final rule, including these criteria. In addition, the FHFA is requesting comments on whether adopting a fifth capital classification category of ''well-capitalized'' would be a useful and appropriate way to encourage Banks to hold more than the minimum amounts of capital. Adopting a well-capitalized category would be similar to the approach used by banking regulators. *See, e.g.*, 12 CFR 103(b) (capital categories for FDIC PCA rule). The criteria for a well-capitalized category could be specified as a percentage of a Bank's minimum leverage and risk-based capital requirements, such as 110 percent of these requirements, and/or incorporate specific retained earnings or market value of equity/par value of capital stock (MVE/PVCS) targets.

The FHFA believes that introducing a retained earnings target or an MVE/PVCS target into such a regulation, or as a separate capital regulation, may be especially helpful in encouraging the Banks to maintain levels of retained earnings that would help prevent impairment of the par value of their stock. Impairment of the par value of a Bank's stock could have consequences for the members' willingness to continue to buy capital and do business with the Bank and for the Bank's ability to raise funds. Thus, defining criteria that would provide incentives to protect the par value of the stock would be an important consideration for the FHFA if it were to adopt a well-capitalized category or a separate retained earnings regulation.[17]

The FHFA recognizes that the market incentive for an individual Bank to achieve and maintain a well-capitalized classification may be mitigated by the fact that the Banks generally fund themselves through issuance of consolidated obligations. Because this debt is the joint and several obligation of the Banks collectively and is not marketed in the name of an individual Bank, a well-capitalized Bank may not fully capture the funding advantage that could be associated with achieving this classification. Nevertheless, having a well-capitalized rating may provide advantages to the Bank in its dealings with counterparties and perhaps in other transactions in which the Bank engages in its own name.

Additional incentives for a Bank to become well-capitalized could be created by restricting certain activities of Banks that have not achieved a well-capitalized rating. Such restrictions could include limiting new business activities, preventing the Bank from repurchasing a member's excess stock prior to the end of the statutory redemption period, or placing some restrictions on the payment of dividends. While neither the PCA provisions in the Safety and Soundness Act as amended by HERA, nor the Bank Act contains these types of restrictions on Banks that otherwise meet their capital requirements,[18] the FHFA could adopt such restrictions pursuant to its general supervisory authority, especially its authority to oversee the prudential operations of the Banks, ensure that the Banks operate in a safe and sound manner and ensure that the manner in which the Banks operate is in the public interest. *See* § 1102, Public Law No. 110–289, 122 Stat. 2663–64 (amending 12 U.S.C. 4513). Similarly, the FHFA considers this authority to provide a basis for adopting a well-capitalized classification as part of the capital classification/PCA rules even though such category is not specifically identified in the Safety and Soundness Act as amended by HERA.

While the FHFA has not adopted a well-capitalized category as part of this interim final rule, it is specifically seeking comments on all aspects of introducing such a category into the regulation. It is especially interested in comments on:

1. Would a well-capitalized classification category provide incentives to the Banks to hold more than the minimum amounts of capital and increase retained earnings as a percentage of capital?

2. What criteria may be appropriate to define such a category?

3. Would a MVE/PVCS or a retained earnings target be appropriate in defining a well-capitalized category, and if so, what should the targets be?

4. What restrictions on adequately capitalized Banks may be appropriate to create an incentive to Banks to achieve and maintain a well-capitalized rating?

5. Alternatively, should the FHFA adopt a MVE/PVCS and/or retained earnings requirement as a separate risk-based capital rule that would be applied to the Banks in addition to the current risk-based capital requirement in 12 CFR 932.3, and incorporate this new requirement into the criteria for defining either the adequately capitalized category or a new well-capitalized category? Should MVE/PVCS or retained-earnings targets be adopted other than as part of the risk-based capital structure?

6. Are there any changes to the current risk-based capital requirements that should be considered in light of the PCA provisions that are being added by this interim final rule? Should MVE/PVCS or retained-earnings targets be adopted other than as part of the risk-based Capital structure?

In addition to seeking comments on the above questions, the FHFA is also interested in comments on all other aspects of the interim final rule as adopted.

[17] If the economic value of a Bank's equity base, defined as the market value of equity (MVE), falls below the par value of the Bank's capital stock (PVCS), then any redemptions or repurchases at par value will dilute the economic value of the remaining shares, causing a Bank's ratio of MVE/PVCS to decline further. Moreover, should the MVE per share of a Bank's stock fall significantly below its par value, members may decide not to purchase additional shares in the Bank. In the extreme, members may exit the System.

[18] The exception is a Bank that has experienced a charge against capital so that the par value of its stock is impaired. In this situation, the Bank Act and existing regulations would prohibit the Bank from redeeming or repurchasing any stock without the permission of the Director or from declaring or paying a dividend, even if the Bank is otherwise adequately capitalized. *See* 12 U.S.C. 1426(f); 12 CFR 917.9(b).

IV. Notice and Public Participation

The FHFA finds for good cause that the notice and comment procedure required by the Administrative Procedure Act is impracticable or contrary to the public interest in this instance. *See* 5 U.S.C. 553(b)(3)(B). The rule is necessary to provide the details on how the FHFA will implement the capital classification and PCA provisions made applicable to the Banks by HERA. These authorities are critical to assuring the safe and sound operations of the Bank System and prompt intervention to address troubled Banks, should such a situation arise. The PCA authority is especially important during the current period of market stress when conditions are volatile and the financial conditions of a Bank could be subject to sudden change. Thus, the FHFA believes immediate adoption of this rule would be in the public interest, but nevertheless believes public comments on this rule would be valuable. The FHFA will consider all comments received on or before April 30, 2009 in promulgating a final rule.

V. Effective Date

For the reasons stated in part IV above, the FHFA for good cause finds that the interim final rule should become effective on January 30, 2009. *See* 5 U.S.C. 553(d).

VI. Paperwork Reduction Act

The rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, the FHFA has not submitted any information to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The FHFA is adopting this regulation in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. *See* 5 U.S.C. 601(2) and 603(a).

List of Subjects in 12 CFR Part 1229

Capital, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Federal Housing Finance Agency is amending 12 CFR chapter XII, subchapter B, by adding new Part 1229 to read as follows:

PART 1229—CAPITAL CLASSIFICATIONS AND PROMPT CORRECTIVE ACTION

Subpart A—Federal Home Loan Banks

Sec.
1229.1 Definitions.
1229.2 Determination of a Bank's capital classification.
1229.3 Criteria for a Bank's capital classification.
1229.4 Reclassification by the Director.
1229.5 Capital distributions for adequately capitalized Banks.
1229.6 Mandatory actions applicable to undercapitalized Banks.
1229.7 Discretionary actions applicable to undercapitalized Banks.
1229.8 Mandatory actions applicable to significantly undercapitalized Banks.
1229.9 Discretionary actions applicable to significantly undercapitalized Banks.
1229.10 Actions applicable to critically undercapitalized Banks.
1229.11 Capital restoration plans.
1229.12 Procedures related to capital classification and other actions.

Authority: 12 U.S.C. 1426, 4513, 4526, 4613, 4614, 4615, 4616, 4617, 4618, 4622, 4623.

Subpart A—Federal Home Loan Banks

§ 1229.1 Definitions.

For purposes of this subpart:

Bank written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Capital distribution means any payment by the Bank, whether in cash or stock, of a dividend, any return of capital or retained earnings by the Bank to its shareholders, any transaction in which the Bank redeems or repurchases capital stock, or any transaction in which the Bank redeems, repurchases or retires any other instrument which is included in the calculation of its total capital.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(i) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(i)) and related regulations.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(ii) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(ii)) and related regulations.

Consolidated obligations means any bond, debenture or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

Critical capital level for a Bank means an amount equal to 2 percent of the Bank's total assets.

Director means the Director of the Federal Housing Finance Agency or his or her designee.

Executive officer means for a Bank any of the following persons, provided that the Director may from time to time add or remove persons, positions, or functions to or from the list (individually for one or more Banks or jointly for all the Banks) by communication to the affected Banks:

(1) Executive officers about whom the Banks must publicly disclose detailed compensation information under Regulation S–K, 17 CFR part 229, issued by the Securities and Exchange Commission;

(2) Any other executive who occupies one of the following positions or is in charge of one of the following subject areas:

(i) Overall Bank operations, such as the Chief Operating Officer or an equivalent employee;

(ii) Chief Financial Officer or an equivalent employee;

(iii) Chief Administrative Officer or an equivalent employee;

(iv) Chief Risk Officer or an equivalent employee;

(v) Asset and Liability Management officer, or an equivalent employee;

(vi) Chief Accounting Officer or an equivalent employee;

(vii) General Counsel or an equivalent employee;

(viii) Strategic Planning officer or an equivalent employee;

(ix) Internal Audit officer or an equivalent employee; or

(x) Chief Information Officer or an equivalent employee; or

(3) Any other individual, without regard to title:

(i) Who is in charge of a principal business unit, division or function; or

(ii) Who reports directly to the Bank's chairman of the board of directors, vice chairman of the board of directors, president or chief operating officer.

FHFA means the Federal Housing Finance Agency.

Minimum capital requirement means the leverage and total capital requirements established for a Bank under section 6(a)(2) of the Bank Act (12 U.S.C. 1426(a)(2)) and related regulations, as such requirements may be revised by the Director, or any similar requirement established for a Bank by regulation, order, written agreement or other action.

New business activity means any activity undertaken by a Bank that requires approval from the FHFA under part 980 of this title.

Permanent capital means the retained earnings of a Bank, determined in accordance with generally accepted accounting principles in the United States (GAAP), plus the amount paid-in for the Bank's Class B stock.

Risk-based capital requirement means any capital requirement established for a Bank under section 6(a)(3) of the Bank Act (12 U.S.C. 1426(a)(3)) and related regulations that ensures a Bank will hold sufficient permanent capital and reserves to support the risks that arise from its operations.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) as amended.

Tangible equity means, for a Bank, the paid-in value of its outstanding capital stock plus its retained earnings calculated in accordance with generally accepted accounting principles in the United States (GAAP) less the amount of any assets that would be intangible assets under GAAP.

Total capital means the sum of the Bank's permanent capital, the amount paid-in for its Class A stock, the amount of any general allowances for losses, and the amount of any other instruments indentified in a Bank's capital plan that the Director has determined to be available to absorb losses incurred by such Bank. For a Bank that has issued neither Class A nor Class B stock, the Bank's total capital shall be the measure of capital used to determine compliance with its minimum capital requirement.

§ 1229.2 Determination of a Bank's capital classification.

(a) *Quarterly determination.* The Director shall determine the capital classification for each Bank no less often than once a quarter based on the capital classifications in § 1229.3 of this subpart. The Director may make a determination with regard to a capital classification for a Bank more often than the minimum required under this paragraph or make a determination for one or more Banks without making a determination for all the Banks.

(b) *Notification to a Bank.* Before finalizing any action to classify a Bank under this section, the Director shall provide a Bank written notice describing the proposed action and an opportunity to submit information that the Bank considers relevant to the proposed action in accordance with § 1229.12 of this subpart.

(c) *Notification to the FHFA.* A Bank shall provide written notification within ten calendar days of any event or development that has caused or is likely to cause its permanent or total capital to fall below the level necessary to maintain its capital classification at the level assigned in the most recent capital classification or reclassification determination by the Director or that is contained in the most recent notice of a proposed capital classification or reclassification provided under § 1229.12(a) of this subpart.

§ 1229.3 Criteria for a Bank's capital classification.

(a) *Adequately capitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered adequately capitalized if, at the time of the determination under § 1229.2(a) of this subpart, the Bank has sufficient permanent and total capital, as applicable, to meet or exceed its risk-based and minimum capital requirements.

(b) *Undercapitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered undercapitalized if, at the time of the determination under § 1229.2(a) of this subpart, the Bank does not have sufficient permanent or total capital, as applicable, to meet any one or more of its risk-based or minimum capital requirements but such deficiency is not of a magnitude to classify the Bank as significantly undercapitalized or critically undercapitalized.

(c) *Significantly undercapitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered significantly undercapitalized if, at the time of the determination under § 1229.2(a) of this subpart, the amount of permanent or total capital held by the Bank is less than 75 percent of what is required to meet any one of its risk-based or minimum capital requirements but the magnitude of the Bank's deficiency in total capital is not sufficient to classify it as critically undercapitalized.

(d) *Critically undercapitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered critically undercapitalized if, at the time of the determination under § 1229.2(a) of this subpart, the total capital held by the Bank is less than or equal to the critical capital level for a Bank as defined under § 1229.1 of this subpart.

§ 1229.4 Reclassification by the Director.

(a) *Discretionary reclassification.* Where the Director determines that any of the grounds described in paragraph (b) of this section exist, the Director may reclassify a Bank as:

(1) Undercapitalized, if it is otherwise classified as adequately capitalized;

(2) Significantly undercapitalized, if it is otherwise classified as undercapitalized; or

(3) Critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(b) *Grounds for discretionary reclassification.* Notwithstanding any other provision of this subpart, the Director may at any time reclassify a Bank under this section if:

(1) The Director determines in writing that:

(i) The Bank is engaging in conduct that could result in the rapid depletion of permanent or total capital;

(ii) The value of collateral pledged to the Bank has decreased significantly; or

(iii) The value of property subject to mortgages owned by the Bank has decreased significantly.

(2) The Director determines, after notice to the Bank and opportunity for an informal hearing before the Director, that a Bank is in an unsafe and unsound condition; or

(3) The Director finds, under § 1371(b) of Safety and Soundness Act (12 U.S.C. 4631(b)), that the Bank is engaging in an unsafe and unsound practice because the Bank's asset quality, management, earnings or liquidity were found to be less than satisfactory during the most recent examination, and any deficiency has not been corrected.

(c) *Procedures.* Before finalizing any action to reclassify a Bank under this section, the Director shall provide a Bank written notice describing the proposed action and an opportunity to submit information that the Bank considers relevant to the Director's proposed action in accordance with § 1229.12 of this subpart.

(d) *Duration.* Any condition, action or inaction by a Bank that is the basis for a decision to reclassify a Bank under this section or under any other authority provided the Director may be considered by the Director and form the basis of further, subsequent actions to reclassify the Bank until such time as the Bank remedies such condition or takes necessary action to correct such situation to the satisfaction of the Director.

(e) *Reservation of authority.* Nothing in this section shall prevent the Director from exercising any other authority under the Safety and Soundness Act, the Bank Act or any regulation to reclassify a Bank for reasons not set forth in paragraph (b) of this section or to take any other action against a Bank.

§ 1229.5 Capital distributions for adequately capitalized Banks.

(a) *Restriction.* An adequately capitalized Bank may not make a capital distribution if after doing so the Bank's capital would be insufficient to maintain a classification of adequately capitalized. A Bank may not make a capital distribution if such distribution would violate any restriction on the redemption or repurchase of capital stock or the payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) and any other applicable regulation.

(b) *Exception.* Notwithstanding the restriction in paragraph (a) of this section, the Director may permit a Bank to repurchase or redeem its shares of stock if the transaction is made in connection with the issuance of additional Bank shares or obligations in at least an equivalent amount to the shares that are redeemed or repurchased and will reduce the Bank's financial obligations or otherwise improve its financial condition. Any transaction under this paragraph also must conform with any restriction on the redemption or repurchase of Bank stock set forth in section 6 of the Bank Act (12 U.S.C. 1426) and in any other applicable regulation.

§ 1229.6 Mandatory actions applicable to undercapitalized Banks.

(a) *Mandatory Actions by the Bank.* A Bank that is classified as undercapitalized shall:

(1) Submit to the Director for approval a capital restoration plan that complies with the the requirements and procedures established by § 1229.11 of this part and receive approval from the Director for such plan;

(2) Fulfill all terms, conditions and obligations contained in the capital restoration plan as approved by the Director;

(3) Not make any capital distribution that would result in the Bank being reclassified as significantly undercapitalized or critically undercapitalized, nor make a capital distribution if such distribution would violate any restriction on the redemption or repurchase of capital stock or the declaration or payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or in any other applicable regulation;

(4) Not permit its average total assets in any calendar quarter to exceed its average total assets during the preceding calendar quarter, where such average is calculated based on the total amount of assets held by the Bank for each day in a quarter, unless:

(i) The Director has approved the Bank's capital restoration plan; and

(ii) The Director determines that:

(A) The increase in total assets is consistent with the approved capital restoration plan; and

(B) The ratio of tangible equity to the Bank's total assets is increasing at a rate sufficient to enable the Bank to become adequately capitalized within a reasonable time and consistent with any schedule established in the capital restoration plan; and

(5) Not acquire, directly or indirectly, any interest in any entity nor engage in any new business activity unless:

(i) The Director has approved the Bank's capital restoration plan, the Bank is implementing the capital restoration plan and the Director determines that proposed acquisition or activity will further achievement of the goals set forth in that plan; or

(ii) The Director determines that the proposed acquisition or activity will be consistent with the safe and sound operation of the Bank and will further the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time.

(b) *Mandatory reclassification by the Director.* The Director shall reclassify an undercapitalized Bank as significantly undercapitalized if:

(1) The Bank does not submit a capital restoration plan that is substantially in compliance with § 1229.11 of this subpart and within the time frame required.

(2) The Director does not approve the capital restoration plan submitted by the Bank; or

(3) The Director determines that the Bank has failed in any material respect to comply with its approved capital restoration plan or fulfill any schedule for action established by that plan.

(c) *Monitoring.* The Director shall monitor the condition of any undercapitalized Bank and monitor the Bank's compliance with the capital restoration plan and any restrictions imposed under this section or § 1229.7 of this subpart. As part of this process, the Director shall review the capital restoration plan and any restrictions or requirements imposed on the undercapitalized Bank to determine whether such plan, restrictions or requirements are consistent with the safe and sound operation of the Bank and will further the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time.

§ 1229.7 Discretionary actions applicable to undercapitalized Banks.

(a) *Discretionary safeguards.* The Director may take any action with regard to an undercapitalized Bank that may be taken with regard to a significantly undercapitalized Bank under section 1366 of the Safety and Soundness Act (12 U.S.C. 4616) or § 1229.7 or § 1229.8 of this subpart if the Director determines that such action is necessary to assure the safe and sound operation of the Bank and the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time.

(b) *Procedures.* Before finalizing any action under this section, the Director shall provide a Bank written notice describing the proposed action or actions and an opportunity to submit information that the Bank considers relevant to the Director's decision to take such action in accordance with § 1229.12 of this subpart.

§ 1229.8 Mandatory actions applicable to significantly undercapitalized Banks.

A Bank that is classified as significantly undercapitalized:

(a) Shall submit to the Director for approval a capital restoration plan that complies with the requirements and procedures established by § 1229.11 of this part and receive approval from the Director for such plan;

(b) Fulfill all terms, conditions and obligations contained in the capital restoration plan once the plan is approved by the Director;

(c) Shall not make any capital distribution that would result in the Bank being reclassified as critically undercapitalized or that would violate any restriction on the redemption or repurchase of capital stock or the payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or any applicable regulation;

(d) Shall not make any capital distribution not otherwise prohibited under paragraph (c) of this section absent the prior written approval of the Director, provided that the Director may approve such distribution only if the Director determines that:

(1) The capital distribution will enhance the ability of the Bank to meet its risk-based and minimum capital requirements promptly;

(2) The capital distribution will contribute to the long-term financial safety and soundness of the Bank; or

(3) The capital distribution is otherwise in the public interest;

(e) Shall not without prior written approval of the Director pay a bonus to any executive officer, provided that for purposes of this paragraph a bonus shall

include any amount paid or accruing to an executive officer under a profit sharing arrangement; and

(f) Shall not without the prior written approval of the Director compensate an executive officer at a rate exceeding the average rate of compensation of that officer during the 12 months preceding the calendar month in which the Bank became significantly undercapitalized, provided however, that for purposes of calculating the executive officer's average rate of compensation, such compensation shall not include any bonus or profit sharing paid or accruing to the officer during the 12 month period.

§ 1229.9 Discretionary actions applicable to significantly undercapitalized Banks.

(a) *Actions by the Director.* The Director shall carry out this section by taking, at any time, one or more of the following actions with respect to a significantly undercapitalized Bank:

(1) Limit the increase in any obligations or class of obligations of the Bank, including any off-balance sheet obligations. Such limitation may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(2) Reduce the amount of any obligations or class of obligations held by the Bank, including any off-balance sheet obligations. Such reduction may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(3) Limit the increase in, or prohibit the growth of any asset or class of assets held by the Bank. Such limitation may be stated in an absolute dollar amount, as a percentage of current assets or in any other form chosen by the Director;

(4) Reduce the amount of any asset or class of asset held by the Bank. Such reduction may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(5) Acquire new capital in the form and amount determined by the Director, which specifically may include requiring a Bank to increase its level of retained earnings;

(6) Modify, limit or terminate any activity of the Bank that the Director determines creates excessive risk;

(7) Take steps to improve the management at the Bank by:

(i) Ordering a new election for the Bank's board of directors in accordance with procedures established by the Director;

(ii) Dismissing particular directors or executive officers, in accordance with section 1366(b)(5)(B) of the Safety and Soundness Act (12 U.S.C. 4616(b)(5)(B)), who held office for more than 180 days immediately prior to the date on which the Bank became undercapitalized, provided further that such dismissals shall not be considered removal pursuant to an enforcement action under section 1377 of the Safety and Soundness Act (12 U.S.C. 4636a) and shall not be subject to the requirements necessary to remove an officer or director under that section; or

(iii) Ordering the Bank to hire qualified executive officers, the hiring of whom, prior to employment by the Bank and at of the option of the Director, may be subject to review and approval by the Director; or

(8)(i) Reclassify a significantly undercapitalized Bank as critically undercapitalized if:

(A) The Bank does not submit a capital restoration plan that is substantially in compliance with § 1229.11 of this part and within the time frame required;

(B) The Director does not approve the capital restoration plan submitted by the Bank; or

(C) The Director determines that the Bank has failed to make reasonable, good faith efforts to comply with its approved capital restoration plan and fulfill any schedule established by that plan.

(ii) Subject to paragraph (c) of this section, the Director may reclassify a significantly undercapitalized Bank under paragraph (a)(8)(i) of this section at any time the grounds for such action exist, notwithstanding the fact that such grounds had formed the basis on which the Director reclassified a Bank from undercapitalized to significantly undercapitalized.

(b) *Additional safeguards.* The Director may require a significantly undercapitalized Bank to take any other action not specifically listed in this section if the Director determines such action will help ensure the safe and sound operation of the Bank and the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time more than any action specifically authorized under paragraph (a) of this section.

(c) *Procedures.* Before finalizing any action under this section, the Director shall provide a Bank written notice describing the proposed action or actions and an opportunity to submit information that the Bank considers relevant to the Director's decision to take such action in accordance with § 1229.12 of this subpart.

§ 1229.10 Actions applicable to critically undercapitalized Banks.

(a) *Appointment of conservator or receiver.* Notwithstanding any other provision of federal or state law, the Director may appoint the FHFA as conservator or receiver of any Bank at any time after the Director determines that the Bank is, or the Director otherwise exercises authority to reclassify the Bank as, critically undercapitalized.

(b) *Periodic determination*—(1) *Determination.* Not later than 30 calendar days after the Director first determines that a Bank is, or the Director otherwise exercises authority to reclassify the Bank as, critically undercapitalized, and a least once during each succeeding 30-day calendar period, the Director make a determination in writing as to whether:

(i) The assets of the Bank are, and during the preceding 60 calendar days have been, less than its obligations to its creditors and others, provided that the Director shall consider as an obligation only that amount of outstanding consolidated obligations for which the Bank is primary obligor or for which the Bank has been ordered to make payments of principal or interest on behalf of another Bank, or is actually making payments of principal or interest on behalf of another Bank; or

(ii) The Bank is not, and during the previous 60 calendar days has not been paying its debts on a regular basis as such debts become due, provided that this provision does not apply to any unpaid debts that are the subject of a *bona fide* dispute.

(2) *Mandatory receivership.* If the Director determines that the conditions described in either paragraph (b)(1)(i) or (b)(1)(ii) of this section applies to a Bank, the Director shall appoint the FHFA as receiver for the Bank. The appointment of the FHFA as receiver under this paragraph shall immediately terminate any conservatorship established for the Bank.

(3) *Determination not required.* A determination under paragraph (b)(1) of this section shall not be required during any period in which the FHFA serves as receiver for a Bank.

(c) *Judicial review.* If the Director appoints the FHFA as conservator or receiver of a Bank under paragraph (a) or (b)(2) of this section, the Bank may within 30 days of such appointment bring an action in the United States district court for the judicial district in which the Bank was established pursuant to section 3 of the Bank Act (12 U.S.C. 1423) or in the United States District Court for the District of Columbia, for an order requiring the

FHFA to remove itself as conservator or receiver.

(d) *Other applicable actions.* Until such time the FHFA is appointed as conservator or receiver for a critically undercapitalized Bank, a critically undercapitalized Bank shall be subject to all mandatory restrictions or obligations applicable to significantly undercapitalized Bank under § 1229.8 of this subpart and will remain subject to any on-going restrictions that the Director may have placed on the Bank under § 1229.7 or § 1229.9 of this subpart, or any restrictions or obligations that are applicable to the Bank under the terms of an approved capital restoration plan.

§ 1229.11 Capital restoration plans.

(a) *Contents.* Each capital restoration plan submitted by a Bank shall set forth a plan to restore its permanent and total capital to levels sufficient to fulfill its risk-based and minimum capital requirements within a reasonable period of time. Such plan must be feasible given general market conditions and the conditions of the Bank and, at a minimum, shall:

(1) Describe the actions the Bank will take, including any changes that the Bank will make to member stock purchase requirements, to assure that it will become adequately capitalized within the meaning of § 1229.3(a) of this subpart;

(2) Specify the level of permanent and total capital the Bank will achieve and maintain;

(3) Specify the types and levels of activities in which the Bank will engage during the term of the plan, including any new business activities that it intends to begin during such term;

(4) Describe any other actions the Bank intends to take to comply with any other requirements imposed on it under this subpart A of part 1229;

(5) Provide a schedule which sets forth dates for meeting specific goals and benchmarks and taking other actions described in the proposed capital restoration plan, including setting forth a schedule for it to restore its permanent and total capital to levels necessary for meeting its risk-based and minimum capital requirements; and

(6) Address such other items that the Director shall provide in writing in advance of such submission.

(b) *Deadline for submission.* A Bank must submit a proposed capital restoration plan no later than 10 calendar days after it receives written notification that such a plan is required either because the notice specifically states that the Director has required the submission of a plan or the notice indicates that the Bank's capital classification or reclassification is to a category for which a capital restoration plan is a mandatory action required of the Bank. The Director may extend this deadline if the Director determines that such extension is necessary. Any such extension shall be in writing and provide a specific date by which the Bank must submit its proposed capital restoration plan.

(c) *Review of the plan by the Director.* The Director shall have 30 calendar days from the date the Bank submits a proposed capital restoration plan to approve or disapprove the plan. The Director may extend the period for consideration of a capital restoration plan for a single 30 calendar day period by providing the Bank with written notification that the decision deadline has been extended. The Director shall provide the Bank with written notification of the decision to approve or not approve a proposed capital restoration plan. If the Director does not approve the capital restoration plan, the written notification of such decision shall provide the reasons for the disapproval.

(d) *Resubmission.* If the Director does not approve the Bank's proposed capital restoration plan, the Bank shall submit a new capital restoration plan acceptable to the Director within 30 calendar days of the date that the Bank was notified of the disapproval. The Director may extend the period for the Bank's submission of a new acceptable capital restoration plan upon a determination that such extension is in the public interest. The Director shall provide the Bank written notice of the extension and include in such notice the date by which the Bank must submit an acceptable plan.

(e) *Amendments.* The Director, in his or her sole discretion, may approve amendments to an approved capital restoration plan if, after consideration of changes in conditions of the Bank, changes in market conditions and other relevant factors, the Director determines that such amendments are consistent with the restoration of the Bank's capital to levels necessary to meet its risk-based and minimum capital requirements in a reasonable period of time and with the safe and sound operations of the Bank.

(f) *Effectiveness of provisions.* A Bank is obligated to implement and fulfill all provisions of an approved capital restoration plan. Unless expressly addressed by the terms of the capital restoration plan, a Bank remains bound by each and every obligation and requirement set forth in the approved capital restoration plan until such requirement or obligation is amended under paragraph (e) of this section or terminated in writing by the Director.

(g) *Appointment of conservator or receiver.* Notwithstanding any other provision of federal or state law, the Director may appoint the FHFA as conservator or receiver of any Bank that is classified as undercapitalized or significantly undercapitalized if the Bank fails to submit a capital restoration plan acceptable to the Director within the time frames established by this section or if the Bank materially fails to implement any capital restoration plan that has been approved by the Director. A Bank may within 30 days of such appointment bring an action in the United States district court for the judicial district in which the Bank is established pursuant to section 3 of the Bank Act (12 U.S.C. 1423) or in the United States District Court for the District of Columbia, for an order requiring the FHFA to remove itself as conservator or receiver.

§ 1229.12 Procedures related to capital classification and other actions.

(a) *Classification or reclassification of a Bank.* Before finalizing any decision to classify a Bank under § 1229.2(a) of this subpart or reclassify the Bank under § 1229.4(a) of this subpart, the Director shall provide the Bank with written notification of the proposed action that states the reasons for the proposed action and describes the information on which the proposed action is based. The notice required under this paragraph may be combined with the notice of a proposed supervisory action required under paragraph (b) of this section. The Director also may combine a notice informing the Bank of its capital classification and simultaneously informing the Bank that the Director intends to reclassify a Bank to a lower capital classification category.

(b) *Notice of a supervisory action.* Before finalizing any action or actions authorized under § 1229.7 or § 1229.9 of this subpart, the Director shall provide the Bank with written notification of the proposed action that states the reasons for the proposed action and describes the information on which the proposed action is based. The notice required under this paragraph may be combined with the notice of a proposed action to classify or reclassify the Bank required under paragraph (a) of this section.

(c) *Bank response.* During the 30 calendar day period beginning on the date that the Bank is provided notice under paragraph (a) or (b) of this section of a proposed action or actions, a Bank may submit to the Director any information that the Bank considers relevant or appropriate for the Director

to consider in determining whether to finalize the proposed action. The Director may, in his or her sole discretion, convene an informal hearing with representatives of the Bank to receive or discuss any such information. The Director, in his or her sole discretion, also may extend the period in which the Bank may respond to a notice for an additional 30 calendar days for good cause, or shorten such comment period if the Director determines the condition of the Bank requires faster action or a shorter comment period or if the Bank consents to a shorter comment period. The Director shall inform the Bank in writing, which may be provided as part of the notice required under paragraphs (a) or (b) of this section, of any decision to extend or shorten the comment period. The failure of a Bank to provide information during the allotted comment period will waive any right of the Bank to comment on the proposed action.

(d) *Final action.* At the earlier of the completion of the comment period established under paragraph (c) or the receipt of information provided by the Bank during such period, the Director shall determine whether to take the proposed action or actions that were the subject of the notice under paragraphs (a) or (b) of this section, after taking into consideration any information provided by the Bank. Such notice shall respond to any information submitted by the Bank. Any final order that the Bank take action, refrain from action or comply with any other requirement that was the subject of a notice under paragraph (b) of this section shall take effect upon the Bank's receipt of the notice required under this paragraph, unless a different effective date is set forth in this notice, and shall remain in effect and binding on the Bank until terminated in writing by the Director or until any terms and conditions for termination, as set forth in the notice, have been met.

(e) *Final actions under this section.* Any final decision that the Bank take action, refrain from action or comply with any other requirement that was the subject of a notice under paragraph (b) of this section shall constitute an order under the Safety and Soundness Act. The Director in his or her discretion may apply to the United States District Court for the District of Columbia or to the United States district court for the judicial district in which the Bank in question is established pursuant to section 3 of the Bank Act (12 U.S.C. 1423) for the enforcement of such order, as allowed under § 1375 of the Safety and Soundness Act (12 U.S.C. 4635) . In addition, a Bank or any executive officer or director of a Bank can be subject to enforcement action, including the imposition of civil monetary penalties, under § 1371, § 1372 or § 1376 of the Safety and Soundness Act (12 U.S.C. 4631, 4632, or 4636) for failure to comply with such an order.

(f) *Judicial review.* A Bank that is not classified as critically undercapitalized may obtain judicial review of any final capital classification decision or of any final decision to take supervisory action made by the Director under § 1229.2, § 1229.4, § 1229.7 or § 1229.9 in accordance with the requirements and procedures set forth in § 1369D of the Safety and Soundness Act (12 U.S.C. 4623).

Dated: January 26, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–2083 Filed 1–29–09; 8:45 am]

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1252

RIN 2590–AA22

Portfolio Holdings

AGENCY: Federal Housing Finance Agency.

ACTION: Interim final rule; request for comments.

SUMMARY: The Federal Housing Finance Agency is issuing an interim final regulation to govern the portfolio holdings of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Comments on the issues and questions set forth in the preamble are requested, and the agency will amend the rule as appropriate after considering comments.

DATES: *Effective Date:* January 30, 2009.

Comment Date: Written comments must be submitted on or before June 1, 2009.

ADDRESSES: You may submit your comments, identified by ''Portfolio Holdings IFR/RFC, [RIN 2590–AA22],'' by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for submitting comments is: Alfred M. Pollard, General Counsel, Attention: Comments ''Portfolio Holdings IFR/RFC, [RIN 2590–AA22],'' Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* The hand delivery address for submitting comments is: Alfred M. Pollard, General Counsel, Attention: Comments ''Portfolio Holdings IFR/RFC, [RIN 2590–AA22],'' Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments may be submitted via electronic mail at *RegComments@FHFA.gov* addressed to Alfred M. Pollard, General Counsel. Please include ''Portfolio Holdings IFR/RFC, [RIN 2590–AA22]'' in the subject line of the message.
- *Federal eRulemaking:* Instructions on comment submission are also available on the eRulemaking portal at *http://www.regulations.gov*.

The Federal Housing Finance Agency (FHFA) requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft Word or in a portable document format (PDF) on 3.5'' disk or CD–ROM, and identify the comments as pertaining to the Portfolio Holdings Interim Final Rule.

FOR FURTHER INFORMATION CONTACT: Ming-Yuen Meyer-Fong, Office of the General Counsel, (202) 414–3798, or Valerie Smith, Office of Policy Analysis and Research, (202) 414–3770, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339. For more information on this Interim Final Regulation, see the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Comments and Access

Instructions: FHFA requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in a portable document format (PDF) on 3.5'' disk or CD–ROM, and identify that comments pertain to ''Portfolio Holdings IFR/RFC, [RIN 2590–AA22].''

Statement of Availability: This Interim Final Regulation as well as any comments posted may be accessed via the internet. Users can access the FHFA web page at *http://www.fhfa.gov*; select Supervision and Regulations Tab; select Regulations, Notices and Public Comments; then, select the link titled ''Portfolio Holdings'' or via the worldwide eRulemaking portal at *http://www.regulations.gov*. User can also access Exhibits A to F referenced in this interim rule document. Specifically, Exhibit A (Amended and Restated Senior Preferred Stock Purchase

Agreement for Fannie Mae) may be accessed at *http://www.treas.gov/press/releases/reports/seniorpreferredstockpurchaseagreementfnm1.pdf*, and Exhibit B (Amended and Restated Senior Preferred Stock Purchase Agreement for Freddie Mac) at *http://www.treas.gov/press/releases/reports/seniorpreferredstockpurchaseagreementfrea.pdf*. Also, Exhibit C (Certificate of Designation of Terms of Variable Liquidation Preference Senior Preferred Stock, Series 2008–2 for Fannie Mae) may be accessed at *http://www.treas.gov/press/releases/reports/certificatefnm2.pdf*, and Exhibit D (Certificate of Terms and Conditions of Variable Liquidation Preference Senior Preferred Stock for Freddie Mac) may be accessed at *http://www.treas.gov/press/releases/reports/certificatefreb.pdf*. Finally, Exhibit E (Warrant to Purchase Common Stock of Fannie Mae) may be accessed at *http://www.treas.gov/press/releases/reports/warrantfnm3.pdf*, and Exhibit F (Warrant to Purchase Common Stock of Freddie Mac) may be accessed at *http://www.treas.gov/press/releases/reports/warrantfrec.pdf*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel (FHFA) at (202) 414–6924.

II. Background

A. Establishment of the Federal Housing Finance Agency

On July 30, 2008, the President signed the Housing and Economic Recovery Act (Act) (Pub. L. 110–289, 122 Stat. 2564). Among other things, the Act established a new independent executive branch agency known as the Federal Housing Finance Agency and transferred the supervisory and oversight responsibilities for Fannie Mae and Freddie Mac (the Enterprises) from the Office of Federal Housing Enterprise Oversight (OFHEO). The Enterprises are government-sponsored enterprises (GSEs) chartered by Congress for the purposes of establishing secondary market facilities for residential mortgages. 12 U.S.C. 1716 *et seq.* (Fannie Mae Charter Act) and 12 U.S.C. 1451, *et seq.* (Freddie Mac Corporation Act). Specifically, Congress established the Enterprises to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages, and promote access to mortgage credit throughout the country. *Id.*

The Act amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) (Pub. L. 102–550, (*codified at* 12 U.S.C. 4501 *et seq.*). Among other things, the Act required FHFA to establish criteria by regulation governing the portfolio holdings of the Enterprises. 12 U.S.C. 4624. The purpose of such regulation is to ensure that the portfolio holdings are backed by sufficient capital and consistent with the mission and the safe and sound operations of the Enterprises. 12 U.S.C. 4624(a). Further, the Act directed that FHFA consider the ability of the Enterprises to provide a liquid secondary market through securitization activities, the portfolio holdings in relation to the overall mortgage market, and adherence to standards of prudential management and operations established by FHFA in accordance with section 1313B of the Act. 12 U.S.C. 4624. The Act also required that any criteria governing Enterprise portfolio holdings ensure that such holdings are consistent with the Enterprises' mission, which includes facilitating the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes. 12 U.S.C. 4624(a); 12 U.S.C. 4501(7).

B. Discussion and Analysis of Interim Rule

The FHFA is issuing this regulation as an interim final rule, with an effective date of January 30, 2009. The name of the newly established part 1252 will read ''Portfolio Holdings,'' which will contain the rules governing Enterprise portfolio holdings. The provisions of this regulation are adopted on an interim final basis and will remain in effect until amended. A 120-day comment period is provided on the interim final rule and on the topics and questions raised in the Request for Comments section.

In accordance with section 1109(b) of the Act, FHFA is required to issue regulations establishing criteria governing Enterprise portfolio holdings. The criteria should ensure that Enterprise portfolio holdings are backed by sufficient capital and consistent with the mission as well as the safe and sound operations of the Enterprises. 12 U.S.C. 4624(a).

The Act authorizes the Director to order temporary adjustments to the established criteria for an Enterprise or both Enterprises, including during times of economic distress or market disruption. 12 U.S.C. 4624(b). In addition, the Act provides that the Director monitor the portfolio of each Enterprise and authorizes the Director to order an Enterprise to dispose of or acquire any asset under terms and conditions to be determined by the Director, if the Director determines that such action is consistent with the purposes of the Safety and Soundness Act or the authorizing statute of the Enterprise. 12 U.S.C. 4624(c).

C. Enterprise Conservatorships and Senior Preferred Stock Agreements With the Department of the Treasury

On September 6, 2008, FHFA, with the concurrence of the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve, placed Fannie Mae and Freddie Mac into conservatorship. By board approval, both Enterprises consented to the appointment of a conservator. FHFA's goals in placing the Enterprises into conservatorship included enhancing their capacity to fulfill their mission of providing liquidity and stability to the mortgage markets and mitigating the systemic risk posed by the Enterprises, which had contributed to instability in mortgage and broader financial markets. Upon a determination by the Director of FHFA that either Enterprise has returned to a safe and solvent condition and the systemic risks contributing to the conservatorship decision have been addressed adequately, the Director will issue an order terminating the conservatorship of that Enterprise. There is no exact time frame as to when the conservatorship of either Enterprise may end.

In order to prevent Enterprise capital from being exhausted, FHFA, upon appointing itself conservator for the Enterprises and on behalf of each Enterprise, entered into separate Senior Preferred Stock Purchase Agreements (Stock Purchase Agreements) with the Department of the Treasury. *See* Exhibits A & B (Stock Purchase Agreements for Fannie Mae and Freddie Mac). Under the Stock Purchase Agreements, each Enterprise's capacity to issue new guarantees of mortgage-backed securities (MBS) and to maintain and grow its mortgage portfolio holdings was fortified through a commitment by the Department of the Treasury to acquire up to $100 billion of senior preferred stock in that Enterprise as necessary to ensure that the Enterprise avoid a negative net worth. In exchange for that commitment, each of the Enterprises granted to the Department of the Treasury shares of Senior Preferred Stock with an initial liquidation

preference of $1 billion (and which value would increase with each investment by the Department of the Treasury up to Treasury's commitment of $100 billion for each Enterprise, as well as with any unpaid commitment fees or dividends owed). *Id.*; *see also* Exhibits C & D (Certificates of Designation of Terms of Variable Liquidation Preference Senior Preferred Stock, Series 2008–2 for Fannie Mae and Freddie Mac). The Enterprises also granted to the Department of the Treasury warrants for shares of common stock. *See* Exhibits E & F (Warrants to Purchase Common Stock of Fannie Mae and Freddie Mac). In conjunction with enhancing the Enterprises' capacity to engage in new business and to maintain and grow their mortgage portfolio holdings, the Stock Purchase Agreements also established criteria governing those holdings.

Under the portfolio holdings criteria set forth in the Stock Purchase Agreements, each Enterprise may, through December 31, 2009, increase its mortgage assets to a level not to exceed $850 billion, thereby allowing each Enterprise to provide additional liquidity during this period of mortgage market stress. After December 31, 2009, the portfolio holdings criteria set forth in the Stock Purchase Agreements require the reduction of each Enterprise's mortgage assets at the rate of 10 percent per year until they reach a size of $250 billion, which would be around the year 2020. That reduction is expected to be achieved largely through natural run-off. The portfolio holdings criteria set forth in the Stock Purchase Agreements do not address Enterprise holdings of non-mortgage assets.

III. Section-by-Section Analysis

Section 1252.1

Section 1252.1 adopts the portfolio holdings criteria established by the Stock Purchase Agreements, as they may be amended from time to time, as the standards for this rule. Under the current Stock Purchase Agreements, which currently have the same portfolio holdings criteria for both Enterprises, an Enterprise may grow its mortgage assets up to $850 billion on December 31, 2009. Starting on December 31, 2010, the Enterprise must hold 10 percent less mortgage assets in its portfolio than at the end of the preceding year until those assets reach a level of $250 billion, at which point, no further decrease is currently required. Adjustments could be made to those criteria by amendment of the Stock Purchase Agreements.

FHFA's establishment of criteria governing Enterprise portfolio holdings in the Stock Purchase Agreements represents an exercise of authority consistent with the authority granted by Congress under section 1369E of the Safety and Soundness Act. FHFA's goals for the conservatorship include fortifying Enterprise capacity to support the secondary mortgage market. The criteria for Enterprise portfolio holdings established in the Stock Purchase Agreements allow the Enterprises immediate capacity to provide stability and liquidity to the secondary mortgage market, while mitigating systemic risk, and facilitating Enterprise efforts to achieve a balance between their mission and safe and sound operations in the intermediate term. Given the severe deterioration in mortgage market conditions and findings by FHFA that the Enterprises were unable to raise capital, immediate, coordinated government action was required to reinforce Enterprise capacity to provide liquidity to the secondary mortgage market. Establishing criteria governing Enterprise portfolio holdings was an essential part of that action.

Section 1252.2

Section 1252.2 addresses the effective duration of the interim rule. FHFA expects these regulations to be effective until any amendment or until the Enterprises are no longer subject to the terms and obligations of the Stock Purchase Agreements.

IV. Regulatory Requirements

A. Paperwork Reduction Act

The interim rule does not contain any information collection requirement to require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, the requirements of the Paperwork Reduction Act do not apply.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the interim final rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the interim final rule is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

C. Good Cause for Issuance of Interim Final Rule

An agency may issue an interim final rule when the agency for good cause finds that notice and public procedure thereon are ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b). The interim final rule issued herein meets the Act's requirement for issuance of regulations establishing portfolio holdings pursuant to section 1369E of the Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*, *as amended*, as well as the requirements for good cause pursuant to 5 U.S.C. 553(b).

HERA requires the Director to issue regulations establishing the portfolio holding standards for the Enterprises within 180 days of enactment. In addition, this interim final rule adopts criteria governing the portfolio holdings of the Enterprises that have been in place and currently govern the actions of the Enterprises. Given these facts, the Director has determined that prior notice and comment procedures are impractical and contrary to public interest.

Further, given that the Enterprises received notice of the portfolio holdings criteria set forth in the Stock Purchase Agreements, and consented to the portfolio holdings criteria through their conservator, opportunity for further comment by the Enterprises is unnecessary. The issuance of this interim final rule and publication in the **Federal Register** serve to comply with the formal requirement in the Act that FHFA issue regulations within 180 days of enactment. *See* section 1109(b) of the Act.

V. Request for Comments

A. Interim Final Rule (§§ 1252.1 and 1252.2)

FHFA is interested in receiving comments on all aspects of the Interim Final Rule, and all relevant comments will be considered. FHFA will amend the interim final rule as appropriate after reviewing comments received.

FHFA also requests comments on the issues and questions set forth herein to give the public an opportunity to comment on criteria governing Enterprise portfolio holdings that will apply when the Enterprises are no longer subject to Stock Purchase Agreements that establish holdings

criteria. When addressing a specific question contained in this interim final rule, FHFA asks that commenters specifically note, by number, which question is being addressed. In particular, the FHFA is seeking comments in the areas and on the issues discussed below. Comments should be identified as pertaining to the Portfolio Holdings IFR and should be submitted as indicated in the **ADDRESSES** section of this preamble.

B. Request for Comments

FHFA as conservator is working to restore each Enterprise to a safe and sound condition. FHFA anticipates that, once housing and mortgage markets stabilize, the Enterprises may return to profitability. While many—including, for example, then-Secretary of the Treasury Henry M. Paulson [1]—have suggested major changes in the structure or roles of the Enterprises, until Congress acts to make changes to their charters, FHFA must implement current law in the best way possible. Accordingly, FHFA plans to develop a regulation establishing criteria that will govern their portfolio holdings at such time as the Enterprises are no longer subject to Stock Purchase Agreements that establish portfolio holdings criteria.

1. Public Policy Objectives of the Regulation

Section 1369E of the Safety and Soundness Act specifies two public policy objectives that guide FHFA's development of a regulation establishing criteria governing Enterprise portfolio holdings. The first objective is ensuring that portfolio holdings are backed by sufficient capital. 12 U.S.C. 4624(a). The Enterprises are subject to capital regulations as set forth in 12 CFR part 1750. As initially enacted, in 1992, the Safety and Soundness Act established fixed minimum capital requirements in statute, directed OFHEO to establish risk-based capital requirements for the Enterprises as prescribed in statute, and greatly limited the agency's flexibility with respect to adjusting those risk-based capital requirements. Capital regulations issued in accordance with those authorities allowed the Enterprises to operate with considerable leverage relative to their risks and relative to other regulated financial institutions, regardless of economic conditions or the phase of the mortgage credit cycle. Each Enterprise's core capital—comparable to Tier 1 capital for banks—consistently represented less than 2 percent of the sum of its mortgage assets and guaranteed MBS. High leverage relative to their risks contributed significantly to the systemic risk posed by the Enterprises and their inability to continue to perform their mission and operate in a safe and sound manner as they incurred losses in 2007 and 2008.

Under the Act, OFHEO's capital regulations remain in effect for the Enterprises until modified or replaced. The Act amended the Safety and Soundness Act to provide FHFA with broad authorities with respect to capital regulation comparable to those possessed by the federal bank regulatory agencies. Accordingly, FHFA has begun to develop a new and more rigorous capital regime that will be applicable to the Enterprises after the conservatorships are terminated. FHFA intends that any new risk-based capital regulation and any amendment to an existing minimum capital regulation ensure that the Enterprises' portfolio holdings are backed by sufficient capital, consistent with the requirements of section 1369E of the Safety and Soundness Act.

FHFA has determined that it is prudent and in the best interests of the secondary mortgage market to suspend capital classifications of the Enterprises, during the conservatorships, in light of the Senior Preferred Stock Purchase Agreements. FHFA continues to closely monitor Enterprise capital levels, but the existing statutory and FHFA-directed regulatory capital requirements are not binding during the conservatorships.

The second public policy objective that guides FHFA's development of a regulation is ensuring that the Enterprises' portfolio holdings are consistent with their mission and safe and sound operations. The statutory mission of the Enterprises is to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages by increasing the liquidity of mortgage investments and improving the distribution of capital available for residential mortgage lending, promote access to mortgage credit throughout the country, and support financing for housing affordable by low- and moderate-income households and in underserved areas. The mission is most challenging and most important during the part of the mortgage credit cycle when market conditions are weakest. Thus, the Enterprises, as a matter of public policy, must maintain sufficient financial strength to make business decisions throughout that cycle that are relatively unconstrained by solvency or liquidity problems. To do so, the Enterprises must limit their risk exposures and build sufficient capital, relative to their risks, in periods of housing and mortgage market expansion, to be able to absorb losses and maintain sufficient capital to comply with regulatory capital requirements and perform their mission during contractions in the housing sector or the broader economy. In addition, to fulfill their mission to provide stability and ongoing assistance to the secondary mortgage market, the Enterprises should not themselves present unnecessary systemic risk to the secondary market or the broader mortgage finance or financial markets. FHFA intends that a regulation establishing criteria governing Enterprise portfolio holdings, in combination with a revised capital regime for the Enterprises, will give them incentives that will promote their ability to perform their mission at all points in the mortgage credit cycle.

2. Questions Requesting Public Comment Regarding Standards Governing Portfolio Holdings of Mortgage Assets

The Enterprises' mortgage portfolio holdings have long been a source of debate by lawmakers, policy makers, researchers, and others, principally because of the size of those holdings. Recent events that eventually caused FHFA to place the Enterprises in conservatorship highlight the risks posed by their large mortgage portfolio holdings and the failure of the Enterprises to hold capital commensurate with the risks posed by those holdings. In mid-2006, the Enterprises agreed to cap the growth of their mortgage portfolio holdings due to their accounting, internal control, and risk management weaknesses. Recent events also underscore the need to establish criteria governing the holdings that will allow the Enterprises to carry out their mission in a safe and sound manner.

Section 1369E of the Safety and Soundness Act makes clear that Congress considered the Enterprises' mortgage portfolio holdings necessary for them to carry out their mission, at least in some circumstances. Accordingly, Congress granted FHFA authority to complete determine the appropriate size and composition of the mortgage portfolio holdings going forward, and whether the Enterprises should and how they can be encouraged

[1] Remarks by Treasury Secretary Henry M. Paulson, Jr., ''The Role of the GSEs in Supporting the Housing Recovery,'' before the Economic Club of Washington (January 7, 2009).

to operate in a more counter-cyclical [2] fashion so that they can respond appropriately when the secondary mortgage market is under stress. FHFA invites public comments on those and related issues. Separate questions are posed about Enterprise *purchases* of mortgage assets for portfolio and about portfolio *holdings* of those assets, since those activities raise distinct issues.

i. Benefits of Enterprise Purchases of Mortgage Assets for Portfolio.

The Enterprises provide liquidity—ready access to funds on reasonable terms—to the thousands of banks, thrifts, and mortgage companies that make loans to housing in the U.S. The Enterprises do so primarily by transforming individual mortgages into MBS backed by Enterprise guarantees of timely payment of principal and interest. Lenders provide the Enterprises with the individual mortgages used to create Enterprise MBS and use the cash raised to engage in further lending. Securitization helps provide a continuous, stable supply of funds to finance purchases of homes by individuals and families and apartment buildings and other multifamily dwellings by investors.

In some circumstances, the Enterprises provide additional liquidity and stability to the secondary mortgage market by buying whole loans from lenders, and by purchasing MBS that they or the Government National Mortgage Association (Ginnie Mae) have guaranteed, or private-label MBS issued by large lenders or Wall Street firms. The Enterprises hold those mortgage assets in portfolio and finance them with debt. By standing ready to purchase MBS they have guaranteed when the market yields of those securities are high relative to the yields of alternative investments, the Enterprises enhance the liquidity of the MBS. Enterprise purchases of selected tranches of private-label MBS may also enhance the liquidity and reduce the yields of those securities.

The economic benefits provided by Enterprise purchases of mortgage assets for their portfolios during periods when the secondary mortgage market is generally liquid and stable are uncertain. Research at the Federal Reserve Board, using data from a period of relative market stability, found that purchases for the Enterprises' portfolios appear to have no material effect on the cost or availability of mortgage credit.[3] Studies conducted by other researchers have found that the Enterprises' purchases of whole loans and MBS for their portfolios reduce mortgage interest rates and mortgage rate volatility, increase the volume of mortgage lending and refinancing, and increase liquidity in the secondary mortgage market.[4]

A large portion of the mortgage assets purchased for portfolio by the Enterprises finance dwelling units that are affordable to low- and moderate-income households, or are located in geographic areas designated as underserved. Those and other loans may have characteristics that make them difficult or uneconomical to securitize. Enterprise purchases of such loans may enhance the liquidity and lower the interest rates that lenders require on those assets. The Enterprises' acquisition of those assets for portfolio may increase the availability and reduce the cost of such financing more than securitization alone.[5]

Further, the Enterprises can support mortgage markets and the housing sector and reduce market yields of MBS by purchasing those securities during periods of severe stress or turmoil in mortgage markets or the broader financial system. In the recent period of mortgage market stress, Enterprise purchases of MBS appear to have had some impact on the secondary market pricing and liquidity of mortgage securities of those securities. When such conditions ease, the Enterprises may be able to sell such mortgage assets in an orderly manner, rather than holding them indefinitely in portfolio.

Question 1: What additional benefits are provided to the secondary mortgage market and the housing sector by Enterprise purchases for portfolio of mortgage loans and MBS, beyond the benefits provided by their securitization activities? What is the magnitude of those additional benefits?

Question 2: Is it possible for the Enterprises to fulfill their mission of providing stability and liquidity to the secondary mortgage market without purchasing mortgage assets for portfolio? If so, how? If not, what types of mortgage assets should they be allowed to purchase for portfolio, and in what amounts?

Question 3: Could the U.S. government better ensure the liquidity and stability of the secondary mortgage market other than through Enterprise purchases of mortgage assets for portfolio—for example, through the activities of the Federal Reserve System, mortgage asset purchases by the Department of the Treasury, or the provision of an explicit government guarantee of MBS securitized by the Enterprises?

Question 4: Should the Enterprises' purchases of mortgage assets vary over the mortgage credit cycle or with conditions in the secondary mortgage market? If so, how?

Question 5: If the Enterprises purchase large volumes of mortgage assets during periods of stress or turmoil in the secondary mortgage market, should they be required to sell those assets once that market stabilizes? If so, when and how should the Enterprises conduct such sales?

ii. Benefits of Enterprise Mortgage Portfolio Holdings.

The Enterprises' portfolio holdings of mortgage assets grew rapidly beginning in the 1990s and extending through the early part of the current decade. The pace of that growth greatly exceeded the growth of the mortgage market as a whole, as measured by residential mortgage debt outstanding (RMDO). The Enterprises' combined holdings of mortgage assets increased from $135 billion, or 4.7 percent of RMDO, at the end of 1990, to $1,410 billion, or 20.4 percent of RMDO, at the end of 2002. In the years that ensued, the Enterprises were plagued by accounting scandals related to the hedging of their mortgage portfolios, internal control problems, and other issues that led to the imposition of supervisory restrictions on the growth of their mortgage assets and capital surcharges. Between 2004 and 2007, the mortgage portfolios of the Enterprises shrunk or grew significantly more slowly than RMDO. At the end of June 2008, their combined holdings of mortgage assets totaled $1,541 billion, or 12.7 percent of RMDO.

Historically, key beneficiaries of the Enterprises' large mortgage portfolio holdings were their shareholders, who profited from the Enterprises' low funding costs. Some types of mortgage assets acquired for the portfolio may have contributed to the Enterprises' mission objectives. Such assets may have included whole loans that finance affordable housing that are not easily

[2] Financial institutions and markets experience periodic lending booms and busts that amplify the business cycle, making economic activity more volatile than it would otherwise be. Counter-cyclical behavior by the Enterprises—building up capital relative to their risks in periods of housing and mortgage market expansion and using that capital to absorb losses and increase their activity during contractions—might reduce the volatility of mortgage lending, housing activity, and overall economic activity.

[3] Andrea Lehnert, S. Wayne Passmore, and Shane Sherland, ''GSEs, Mortgage Rates, and Secondary Market Activities.'' (April 2008) *Journal of Real Estate Finance and Economics* 36(3), 343–363.

[4] See the studies cited in James C. Miller, III, and James E. Pearce, *Revisiting the Net Benefits of Freddie Mac and Fannie Mae* (a study prepared for Freddie Mac, November 2006).

[5] Bernanke, Ben S., ''GSE Portfolios, Systemic Risk, and Affordable Housing,'' Speech before the Independent Community Bankers of America's Annual Convention and Techworld, Honolulu, Hawaii (March 6, 2007).

securitized because of non-standard features and small volumes, as well as mortgage securities that are backed by affordable housing loans and that are not traded in markets with the broad appeal and liquidity of Enterprise MBS. The mortgage portfolios have also been used to support the Enterprises' securitization activities, to provide liquidity and stability to the secondary mortgage market, and to support the liquidity of the Enterprises' own MBS.

Question 6: Could the benefits of the Enterprises' mortgage portfolio holdings be achieved if the levels of those holdings were substantially lower than current levels? Could the Enterprises carry out their mission of providing stability and liquidity to the secondary mortgage market and of supporting affordable housing without maintaining portfolios of mortgage assets? If so, explain how.

iii. Additional Risks to the Enterprises Posed by Their Mortgage Portfolio Holdings.

The Enterprises' securitization activities and portfolio holdings of whole loans expose them to mortgage credit risk—the risk of losses if borrowers do not make their payments due or default on their loans. The recent credit crisis demonstrates that broad-based and sizable losses from exposure to mortgage credit risk can occur. Securitization and portfolio investment in whole loans also expose the Enterprises to the risk that lenders, mortgage servicers, and mortgage insurers may not fulfill their contractual obligations, with significant consequences during a systemic event.

The mortgage portfolios of the Enterprises expose them to risks beyond those posed by their securitization activities. The principal additional risks are interest rate risk, derivatives counterparty credit risk, the risk of declines in the fair values of MBS holdings due to increased credit and market liquidity risks, funding and basis risks, and operational risks. Their exposure to interest rate risk arises primarily from the long-term, fixed-rate mortgages that they hold, directly or through MBS. Because borrowers can prepay their mortgages at any time, a mismatch of the durations of Enterprise mortgage assets and liabilities can result. The Enterprises use various techniques, including hedging with derivatives, to manage the risk resulting from this mismatch. Using derivatives to hedge that risk exposes the Enterprises to derivatives counterparty credit risk. The Enterprises' holdings of private-label MBS pose additional credit risk and significant risk of asset price declines due to declines in market liquidity. Funding risk is the risk that a firm will be unable to obtain funds at a reasonable cost or at all when its existing debt matures or its payments are due. Basis risk is the risk that the interest rates in different financial markets will not move in the same direction or amount at the same time.

Operational risk can manifest itself in a number of ways, most commonly through the breakdown of internal controls, ineffective corporate governance, inadequate policies and procedures, employee behavior, and external events. The Enterprises face operational risks due to technology failures, business disruptions, internal or external fraud, processing errors, and weaknesses in internal policies and procedures. For example, the accounting scandals at both Enterprises in the early part of the decade were partially due to irregularities in the implementation of complex derivatives accounting principles.

Section 1369E of the Safety and Soundness Act requires that in establishing criteria governing the Enterprises' portfolio holdings, the Director shall consider the Enterprises' adherence to prudent management and operations standards established under section 1313B of the Act. 12 U.S.C. 4624(a). Those standards must address many issues related to managing risks posed by the Enterprises' mortgage portfolio holdings, including management of interest rate risk exposure, management of market risk, adequacy and maintenance of liquidity and reserves, management of asset and investment portfolio growth, overall risk management processes, management of credit and counterparty risk, and management of operational risks.

Question 7: Aside from reducing the volume or altering the composition of mortgage assets held by the Enterprises, are there other ways in which FHFA can use criteria governing their mortgage portfolio holdings to reduce their exposure to or improve their management of interest rate, credit, operational, and other risks? If so, what approaches should FHFA take?

Question 8: How can FHFA best use criteria governing mortgage portfolio holdings, in conjunction with capital regulations and other supervisory tools, such as prudent management and operations standards established in accordance with section 1313B of the Safety and Soundness Act, to address the Enterprises' exposure to the additional risks posed by such holdings?

iv. Systemic Risk Posed by Enterprise Mortgage Portfolio Holdings.

There is broad agreement among policymakers and economists that the Enterprises pose substantial systemic risk to mortgage markets and the broader financial system.[6] As the Treasury Department recently stated, ''[t]he systemic importance of these two enterprises, and the systemic impact of a collapse of either, cannot be overstated.'' [7] The Enterprises' systemic risk arises from four sources:

- High leverage increases the risk of Enterprise failure and of the adverse consequences for mortgage lending and housing activity attendant on such failure.
- The Enterprises' combined mortgage assets totaled nearly $1.6 trillion as of November 30, 2008. If either Enterprise had to shrink its portfolio holdings rapidly, the market values of the mortgage assets held by many other financial institutions would be adversely affected, exacerbating solvency and liquidity problems.
- Mortgage lender dependence on the Enterprises, already high since the mid-1980s, has increased substantially since the collapse of the secondary market for private-label MBS in the third quarter of 2007. If either Enterprise greatly reduced or sharply curtailed its mortgage purchases, mortgage rates would increase, which would reduce new mortgage lending, depress the market values of mortgage assets held throughout the industry, and tend to weaken housing and the broader economy.
- Outstanding Enterprise debt—over $1.6 trillion at the end of November 2008—is widely held by commercial banks in the U.S., institutional investors, foreign central banks, and other foreign investors. If Enterprise

[6] *See*, among many other studies, Bernanke, Ben S., ''GSE Portfolios, Systemic Risk, and Affordable Housing,'' Speech before the Independent Community Bankers of America's Annual Convention and Techworld, Honolulu, Hawaii (March 6, 2007); Eisenbeis, Robert A, W. Scott Frame, and Larry D. Wall, ''An Analysis of the Systemic Risks Posed by Fannie Mae and Freddie Mac and an Evaluation of the Policy Options for Reducing Those Risks,'' *Journal of Financial Services Research* (Vol. 31, Nos. 2–3, June 2007), 75–99; Greenspan, Alan, ''Government-Sponsored Enterprises,'' Remarks Delivered at the Conference on Housing, Mortgage Finance, and the Macroeconomy, Federal Reserve Bank of Atlanta (May 19, 2005); Mankiw, N. Gregory, Remarks at the Conference of State Bank Supervisors, State Banking Summit and Leadership Conference (November 6, 2003); Office of Federal Housing Enterprise Oversight, *Systemic Risk: Fannie Mae, Freddie Mac, and the Role of OFHEO* (Washington, DC: February 2003); and Poole, William. ''Housing in the Macroeconomy,'' *Review*, Federal Reserve Bank of St. Louis (May/June 2003), 1–8.

[7] Department of the Treasury, *Responses to Questions of the First Report of the Congressional Oversight Panel for Economic Stabilization* (December 31, 2008), 10.

solvency or liquidity problems led to large declines in the market value of that debt, there could be serious adverse effects on banks and other investors. The Enterprises are also among the largest end-users of over-the-counter (OTC) interest rate derivatives. Uncertainty about how counterparties would replace their OTC derivatives with one or both Enterprises, if either failed, could adversely affect those institutions and the OTC derivatives markets.

As noted above, a key objective of placing the Enterprises in conservatorship and executing the Stock Purchase Agreements was to limit the systemic risk they posed, which had risen sharply in 2007 and the first half of 2008, as they reported financial losses and their leverage and borrowing costs increased, and to avoid adverse consequences for the housing sector and economy. If the mortgage portfolio holdings of the Enterprises were reduced in order to limit the systemic risk they pose, the overall effect on financial stability would depend on what other entities acquired the assets, how they funded the assets and managed the associated risks, and how much capital they held against those risks.

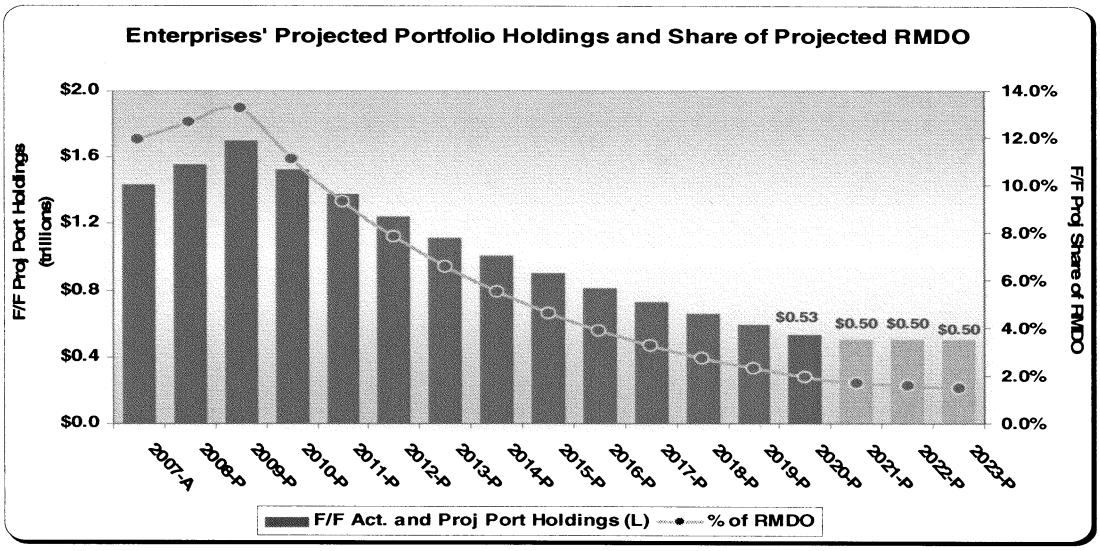
Question 9: Should FHFA use criteria governing the Enterprises' mortgage portfolio holdings to mitigate the systemic risk posed by the Enterprises? If so, how? If the mortgage portfolio holdings of the Enterprises were reduced in an effort to mitigate the systemic risk posed by the Enterprises, how would the stability of the mortgage markets and the broader financial system be affected? What steps could the federal government take to maximize any improvement in stability?

v. Criteria Governing Enterprise Mortgage Portfolio Holdings.

a. Size of Mortgage Portfolio Holdings.

Under the portfolio holdings criteria established in the Stock Purchase Agreements, the mortgage assets of each Enterprise will decline by 10 percent each year starting in 2010 and each year thereafter until the holdings of each Enterprise reached $250 billion. FHFA projects that would occur in 2020, at the end of which each Enterprise's mortgage portfolio holdings would represent about 2.0 percent of projected RMDO. (Chart 1).

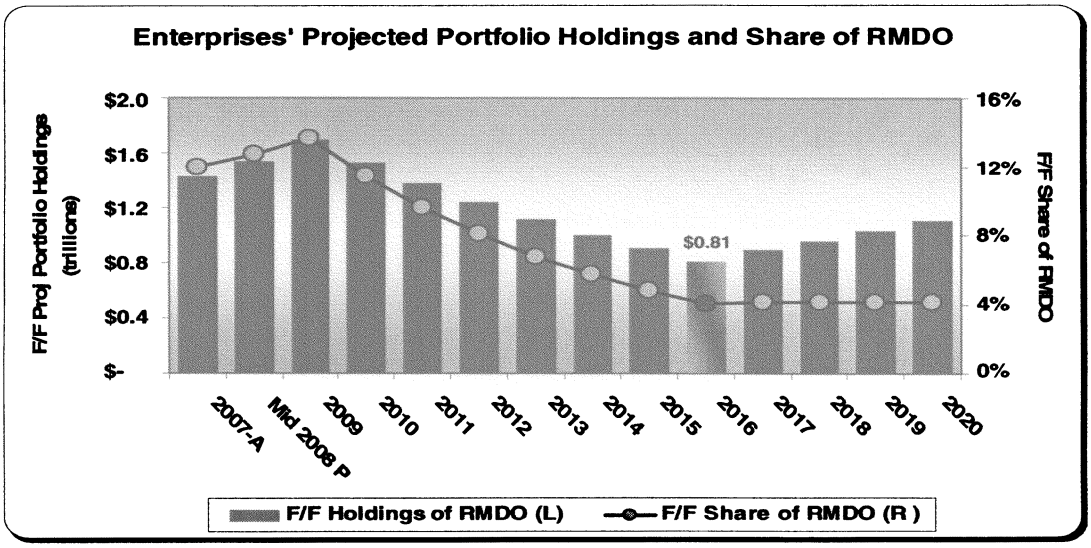
Chart 1
Projected Combined Enterprise Mortgage Portfolio Holdings in Dollars and as a Share of Residential Mortgage Debt Outstanding (RMDO) under the Senior Preferred Stock Purchase Agreements



Source: FHFA based on data from the Enterprises and the Federal Reserve Board

Another approach could establish criteria that, rather than specifying dollar amounts, specified maximum ratios between each Enterprise's mortgage assets and some indicator of the size of the mortgage market such as RMDO. For example, the criteria could require each Enterprise's mortgage assets to decline as required by the Stock Purchase Agreements until each Enterprise's mortgage portfolio represented no more than, say, 2.1 percent of RMDO—the share that $250 billion represented as of mid-2008—and limit each portfolio's future growth so as to maintain its ratio to RMDO at 2.1 percent thereafter. FHFA projects that would occur in 2016, at the end of which each Enterprise's mortgage assets would be about $400 billion (Chart 2). Under any such approach, increases in the mortgage assets of an Enterprise or both Enterprises could be permitted on a temporary basis in times of economic distress or market disruption, consistent with 12 U.S.C. 4624(b).

Chart 2
Projected Combined Enterprise Mortgage Portfolio Holdings in Dollars and as a Share of Residential Mortgage Debt Outstanding (RMDO) Under an Alternative to the Senior Preferred Stock Purchase Agreements



Sources: FHFA based on data from the Enterprises and the Federal Reserve Board

Other criteria could be devised to internalize at the Enterprises some of the potential costs of large portfolio holdings, in order to create an incentive for the Enterprises to restrain those holdings below a desired level. Thus, the criteria could impose a firm limit on the mortgage assets of each Enterprise, but create a range below that limit within which holdings would be increasingly discouraged. For example, that range could begin at their combined share of RMDO at the end of 1991 (5 percent—2.5 percent per Enterprise) and go as high as their combined market share at the end of 1994, the mid-point of the seven-year period 1991 through 1997 (or 8.3 percent—4.1 percent per Enterprise). A sliding scale minimum capital surcharge could apply if an Enterprise chose to hold more than the lower amount of the range. The surcharge would increase as the holdings moved toward the limit, with a maximum surcharge of, perhaps, an additional two percent of mortgage assets.

Yet another approach could establish criteria that would allow the mortgage portfolio holdings of each Enterprise to expand and contract with its mortgage credit book of business—the sum of those holdings plus its guaranteed MBS held by other investors.

Question 10: Should the size of the Enterprises' mortgage portfolio holdings be limited to a fixed dollar amount, be linked to a market indicator, or be linked to the size of their MBS outstanding?

Question 11: Should the permissible size of the Enterprises' holdings of mortgage assets vary in a manner related to the phase of the mortgage credit cycle or conditions in the secondary mortgage market? If so, how should FHFA monitor that cycle or secondary mortgage market conditions, and how should the permissible size of those holdings vary?

Question 12: How could decreases in the Enterprises' mortgage portfolio holdings affect their operational infrastructures? How would changes in their operational infrastructures affect their ability to expand their purchases of mortgage assets for portfolio during times of stress in the secondary mortgage market? Does each Enterprise need a minimum level of mortgage portfolio holdings to maintain the infrastructure needed to expand its purchases under such conditions?

Question 13: Should each Enterprise's minimum capital requirement increase with the size or composition of its mortgage portfolio holdings? If so, how should such increase be imposed? Should a capital surcharge be imposed on each Enterprise if its mortgage portfolio holdings exceed some level? If so, how should such surcharge be imposed?

b. Composition of Mortgage Portfolio Holdings.

Criteria regarding the Enterprises' mortgage portfolios could limit their holdings of certain types of assets, while encouraging them to hold more of mortgage products that make a greater contribution to specific elements of their mission.

Question 14: Should FHFA restrict the types of mortgage assets the Enterprises are allowed to hold to those that are strictly related to specific elements of their mission? If so, how should those assets be defined? For example, should FHFA prohibit or place a limit on each Enterprise's holdings of mortgage-related securities guaranteed by the other Enterprise or Ginnie Mae or its holdings of private-label MBS?

Question 15: Should FHFA require that assets purchased for the portfolio each year comply with affordable housing goals and sub-goals established for that year?

Question 16: Should FHFA allow the Enterprises to hold, without limit, either whole loans (or securities backed by them) that finance affordable housing not easily securitized because of non-standard features and small volumes or mortgage securities backed by loans that finance affordable housing, where markets for those securities are small or thin? Please provide examples of such loans or securities. Alternatively, should FHFA place a limit on the amount of such loans or securities that an Enterprise can hold? If so, what is an appropriate level?

c. Funding of Mortgage Portfolio Holdings.

The Enterprises fund their portfolios of mortgage assets largely by issuing debt. The Enterprises are also highly leveraged—historically, each Enterprise's core capital represented less than 2 percent of the sum of its mortgage assets and guaranteed MBS. The Enterprises have relied heavily on short-term debt to fund their mortgage portfolio holdings, used financial derivatives to alter synthetically the maturity of that debt, and depended on their ability to roll over debt and enter into new derivatives contracts in all market conditions. Because of the favorable funding costs enjoyed by the Enterprises, they benefitted from attractive spreads between the yields on the assets comprising their mortgage portfolio holdings and their cost of funds. FHFA will address issues related to the funding of Enterprise mortgage assets through promulgation of risk management standards, the agency's examination process, and by a new risk-based capital standard.

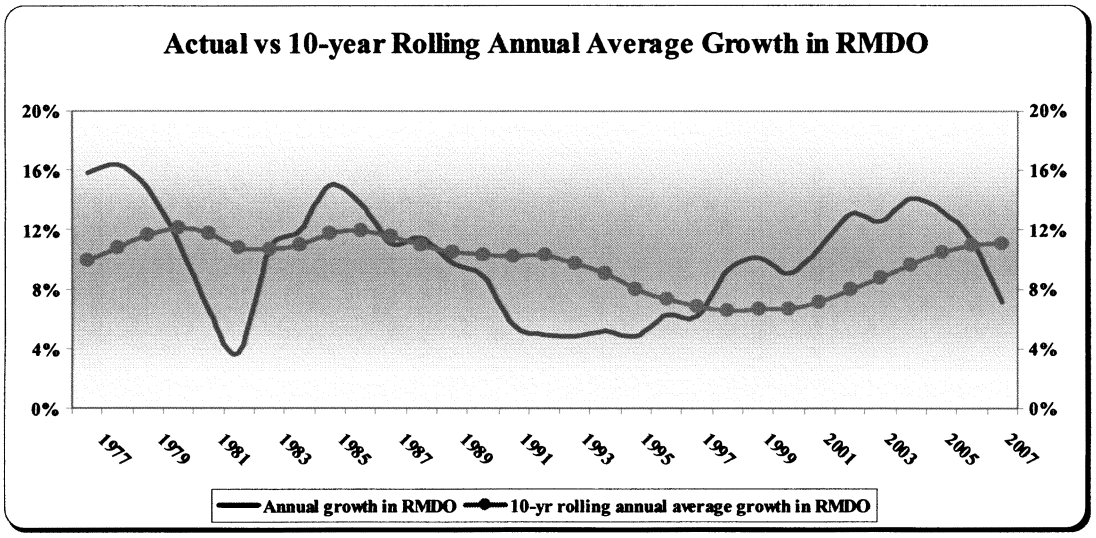
Question 17: Should FHFA establish criteria governing the Enterprises' mortgage portfolio holdings that specify that the Enterprises adhere to a specific maximum ratio of short-term debt to mortgage assets or minimum ratio of callable debt to long-term, fixed-rate mortgage assets or to total long-term debt?

Question 18: Should FHFA specify criteria that condition Enterprise mortgage portfolio holdings above a certain amount on maintaining measures of the risks—*e.g.*, duration and convexity—associated with those portfolios within specified levels? Should adherence to appropriate limits on such risks be addressed through of prudential management and operations standards in accordance with section 1313B of the Act and FHFA's examination process?

d. Counter-Cyclical Changes in Enterprise Mortgage Portfolio Holdings.

FHFA could establish criteria that limit the rate of growth of each Enterprise's mortgage assets once the Enterprise complied with criteria related to the size of those holdings. The growth limit could be tied to the average growth rate of the mortgage market over a long period, which would allow each Enterprise's portfolio holdings to grow more slowly (or rapidly) than the overall market during periods in which the market was expanding more rapidly (or slowly) than on average. That type of growth limit would require the Enterprises to vary the rate of growth of their mortgage portfolio holdings in a counter-cyclical manner. One way of achieving this could be to require that growth in each Enterprise's portfolio holdings be limited to the preceding 10-year rolling annual average growth rate of RMDO (Chart 3).

Chart 3



Source: FHFA based on data from the Federal Reserve Board

Question 19: Should FHFA create incentives for the Enterprises to behave in a counter-cyclical manner through criteria governing their portfolio holdings of mortgage and non-mortgage assets, regulatory capital requirements, or both? If so, how? What are the implications of specifying such criteria for the Enterprises' mission?

3. Questions Requesting Public Comment Regarding Standards Governing Enterprise Holdings of Non-Mortgage Assets

i. Benefits and Risks of Enterprises Holdings of Non-Mortgage Assets.

The Enterprises need to maintain adequate levels of liquidity so that they can carry out their day-to-day operating activities. Maintaining adequate levels of liquidity can help strengthen the Enterprises' ability to meet their statutory mission of providing stability and liquidity to the secondary mortgage market, during good times and during periods of market stress, without incurring extraordinary financing costs.

The risk of not maintaining a portfolio of highly liquid non-mortgage assets was illustrated in the recent market disruption. The quick reversal in market conditions illustrates how fast liquidity can disappear and how a prolonged period of market illiquidity can affect firms such as the Enterprises and their counterparties. Indeed, during that period, spreads between the yields of Enterprise debt and U.S. Treasury securities reached all time highs. In addition, the Enterprises' large holdings of mortgage assets were not useful sources of cash as the MBS repurchase agreement market shriveled, and sales of MBS would have only exacerbated problems in the market.

There is an opportunity cost associated with holding a sizable volume of generally low-yielding assets

in an effort to ensure adequate liquidity in a financial crisis. However, up to a point that cost is offset by the potential benefit of the Enterprises being prepared to maintain funding for their long-term assets and to respond in an appropriate and meaningful way to a market disruption.

Question 20: What risks and costs are associated with requiring the Enterprises to maintain a portfolio of liquid, non-mortgage assets?

Question 21: Is it appropriate to require the Enterprises to hold a large portfolio of highly liquid assets even during periods of market tranquility? If so, why? Should the Enterprises be compensated for holding ''excess'' levels of non-mortgage assets during periods of market tranquility? If so, what are appropriate incentives?

ii. Standards Governing Enterprise Non-Mortgage Assets.

The rationale for establishing standards governing the size and composition of the Enterprises' non-mortgage assets is to ensure that they maintain sufficient liquidity to meet their obligations and engage in new business during market distress and to ensure that the Enterprises do not hold amounts of those assets beyond those needed to achieve their mission. That can be best achieved by requiring that the Enterprises maintain portfolios of marketable, highly liquid non-mortgage assets at prescribed levels. Those assets would be easily converted into cash, without loss of value and disruption to financial markets. Indeed, during a market crisis such as that experienced in the recent past, a portfolio of highly liquid non-mortgage assets would better enable the Enterprises to perform their mission of providing liquidity and stability to the secondary mortgage market.

a. Size of the Non-Mortgage Portfolios.

FHFA could establish criteria governing the size of the Enterprises' holding of non-mortgage assets. For example, the criteria could require that each Enterprise maintain a minimum balance of marketable, highly liquid non-mortgage assets equal to 30 days of expected net cash needs and totaling at least $30 billion at all times.

Question 22: Should the Enterprises be required to maintain a specific minimum dollar amount of highly liquid non-mortgage assets at all times? If so, what is an appropriate dollar amount? Alternatively, should the level of non-mortgage assets be set at a percentage of an Enterprise's total assets or a specified number of days of liquidity? If so, what is an appropriate percentage factor or number of days?

Question 23: Should the Enterprises' non-mortgage portfolios grow with the phases of the mortgage credit cycle or counter to that cycle? Should the Enterprises be given incentives for holding large volumes of liquid non-mortgage assets during periods of ample market liquidity? If so, how should such incentives be provided? For instance, after criteria governing holdings of non-mortgage assets are established, FHFA could reduce each Enterprise's minimum capital requirement by, for example, 75 percent of the amount of non-mortgage assets held to comply with those criteria.

b. Composition of the Non-Mortgage Portfolios.

In establishing criteria governing the composition of the Enterprises' non-mortgage portfolios, FHFA could require that U.S. Treasury securities with maturities of 30 days or less represent a specified percentage of each Enterprise's total non-mortgage assets (for example, 50 percent). The balance of each Enterprise's portfolio could include other marketable, liquid, highly-rated securities, with maturities of one year or less, such as the following—

- Commercial paper (rated A1/P1);
- Short-term Eurodollar time deposits;
- Short-term money market accounts; and
- Short-term municipal securities.

Question 24: Should the criteria enumerate the specific types of investments the Enterprises should hold in the non-mortgage portfolios. If so, what type assets should be included? Should U.S. Treasury securities represent a specific share of the non-mortgage portfolios? If so, what is an appropriate percentage or dollar amount?

Question 25: What is an appropriate maturity range for securities comprising the non-mortgage portfolios? How should holdings be distributed according to that range?

4. Questions Requesting Public Comment Regarding Temporary Adjustment of Criteria Governing Portfolio Holdings

The Act authorizes the Director to order temporary adjustments to the established criteria governing the portfolio holdings of an Enterprise or both Enterprises, including during times of economic distress or market dislocation. 12 U.S.C. 4624(b).

Question 26: Should FHFA attempt to specify in advance how it might adjust criteria governing Enterprise mortgage or non-mortgage portfolio holdings in specific circumstances?

List of Subjects

12 CFR Part 1252

Government-sponsored enterprises, Portfolio holdings, Mortgages.

Authority and Issuance

■ Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4624, the Federal Housing Finance Agency hereby amends Title 12, Chapter XII, Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter C—Enterprises

■ 1. Add Subchapter C consisting of part 1252 to read as follows:

PART 1252—PORTFOLIO HOLDINGS

Sec.
1252.1 Enterprise portfolio holdings criteria.
1252.2 Effective duration.

Authority: 12 U.S.C. 4624.

§ 1252.1 Enterprise portfolio holding criteria.

The Enterprises are required to comply with the portfolio holdings criteria set forth in their respective Senior Preferred Stock Purchase Agreements with the Department of the Treasury, as they may be amended from time to time.

§ 1252.2 Effective duration.

This part shall be in effect for each Enterprise so long as—

(a) This part has not been superseded through amendment, and

(b) The Enterprise remains subject to the terms and obligations of the respective Senior Preferred Stock Purchase Agreement.

Dated: January 16, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–2047 Filed 1–29–09; 8:45 am]

BILLING CODE 8070–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Concerning Procedures for Electronic Filing

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The Board is amending regulations concerning the procedures for filing documents with the Agency

electronically. The revisions provide that when the document being filed electronically is required to be served on another party to the proceeding, the other party shall be served by electronic mail (e-mail), if possible. If electronic service is not possible, the other party shall be notified by telephone of the substance of the transmitted document and a copy of the document shall be served personally, or by registered mail, certified mail, regular mail, or private delivery service, or, with the consent of the other party, by facsimile transmission.

DATES: January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, 202–273–1067.

SUPPLEMENTARY INFORMATION:

Current regulation: Section 102.114 provides that the Agency's Web site (*http://www.nlrb.gov*) contains certain forms that parties or other persons are permitted to file with the Agency electronically. Parties or other persons choosing to utilize those forms to file documents electronically are permitted to do so by following the instructions described on the Web site, notwithstanding any contrary provisions elsewhere in these rules. In the event the document being filed electronically is required to be served on another party to a proceeding, the other party shall be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission.

Proposed revision: The Board first began e-Filing as a pilot project in 2003. Since that time the scope of e-Filing has been expanded significantly, and more than 12,000 documents have been filed electronically with the Board and its Regional Offices. During that same time period it has become clear that the use of e-mail has become a well established method of transacting business by both the Government and the public it serves. Accordingly, in August 2008 the Board initiated another pilot project to test the ability of the Agency to issue decisions electronically and serve the parties via e-mail.

In addition, when the e-Filing project first began, the Board adapted the expedited service requirements applicable to filings by personal service and required documents filed electronically to be served on other parties by overnight delivery service. As e-Filing has become an accepted method of filing documents with the Agency, it has become increasingly clear that these expedited service requirements impose a substantial cost on all parties and are a significant impediment to greater use of e-Filing. Also, these expedited service requirements are inconsistent with the practices adopted by the Federal Court system for its e-Filing procedures.

Based upon the success of the e-Filing and the e-Issuance/e-Service projects, and in an effort to align Board procedures more closely with those of the Federal Court system, the Board has now decided to allow parties to serve documents upon each other electronically, using e-mail, and to eliminate the expedited service requirements that have proven to be an unnecessary burden. Given the widely accepted use of e-mail as a tool of business communication, allowing electronic service via e-mail will address the concerns that led the Board to adopt the original expedited service requirements. In those limited circumstances where electronic service is not possible, the Board is of the view that notification by telephone, followed by service by traditional means, will provide adequate notice of the filing and protect the rights of the parties.

Administrative Procedure Act

Because the change involves rules of agency organization, procedure or practice, the Agency is not required to publish it for comment under Section 553 of the Administrative Procedure Act (5 U.S.C. 553).

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not have a significant economic impact on small business entities since the changes do not impose any additional economic cost.

Small Business Regulatory Enforcement Fairness Act

Because the rule relates to Agency procedure and practice and merely modifies the agency's existing filing procedures, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

Paperwork Reduction Act

This part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Lists of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

■ For the reasons set forth above, the NLRB is amending 29 CFR Chapter I, Part 102, as follows:

PART 102—RULES AND REGULATIONS SERIES 8

■ 1. The authority citation for part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. In § 102.114 revise paragraphs (a) and (i) to read as follows:

(a) Service of documents by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, electronic mail (if the document was filed electronically) or private delivery service. Service of documents by a party on other parties by any other means, including facsimile transmission, is permitted only with the consent of the party being served. Unless otherwise specified elsewhere in these rules, service on all parties shall be made in the same manner as that utilized in filing the document with the Board, or in a more expeditious manner; however, when filing with the Board is done by hand, the other parties shall be promptly notified of such action by telephone, followed by service of a copy in a manner designed to insure receipt by them by the close of the next business day. The provisions of this section apply to the General Counsel after a complaint has issued, just as they do to any other party, except to the extent that the provisions of §§ 102.113(a) or 102.113(c) provide otherwise.

* * * * *

(i) The Agency's Web site (*http://www.nlrb.gov*) contains certain forms that parties or other persons are permitted to file with the Agency electronically. Parties or other persons choosing to utilize those forms to file documents electronically are permitted to do so by following the instructions described on the Web site, notwithstanding any contrary provisions elsewhere in these rules. In the event the document being filed electronically is required to be served on another party to a proceeding, the

other party shall be served by electronic mail (e-mail), if possible. If the other party does not have the ability to receive electronic service, the other party shall be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission.

Dated: Washington, DC, January 23, 2009.

By Direction of the Board.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. E9–1832 Filed 1–29–09; 8:45 am]

BILLING CODE 7545–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

DATES: *Effective Date:* This rule is effective as of January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295–1624; *mcohan@lsc.gov.*

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (''Act''), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(c) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Federal Poverty Guidelines. The revised figures for 2009 set out below are equivalent to 125% of the current Federal Poverty Guidelines as published on January 23, 2009 (74 FR 4199).

In addition, LSC is publishing charts listing income levels that are 200% of the Federal Poverty Guidelines. These charts are for reference purposes only as an aid to grant recipients in assessing the financial eligibility of an applicant whose income is greater than 200% of the applicable Federal Poverty Guidelines amount, but less than 200% of the applicable Federal Poverty Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with sections 1611.3, 1611.4 and 1611.5).

List of Subjects in 45 CFR Part 1611

Grant programs—Law, Legal services.

■ For reasons set forth above, 45 CFR part 1611 is amended as follows:

PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

■ 2. Appendix A to part 1611 is revised to read as follows:

Appendix A to Part 1611—Legal Services Corporation 2009 Poverty Guidelines *

Size of household	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	$13,538	$16,913	$15,575
2	18,213	22,763	20,950
3	22,888	28,613	26,325
4	27,563	34,463	31,700
5	32,238	40,313	37,075
6	36,913	46,163	42,450
7	41,588	52,013	47,825
8	46,263	57,863	53,200
For each additional member of the household in excess of 8, add	4,675	5,850	5,375

* The figures in this table represent 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services.

REFERENCE CHART—200% OF DHHS FEDERAL POVERTY GUIDELINES

Size of household	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	$21,660	$27,060	$24,920
2	29,140	36,420	33,520
3	36,620	45,780	42,120
4	44,100	55,140	50,720
5	51,580	64,500	59,320
6	59,060	73,860	67,920
7	66,540	83,220	76,520
8	74,020	92,580	85,120
For each additional member of the household in excess of 8, add	7,480	9,360	8,600

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. E9–1851 Filed 1–29–09; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, and 52

[FAC 2005–29, Amendment–2; FAR Case 2007–013; Docket 2008–0001; Sequence 3]

RIN 9000–AK91

Federal Acquisition Regulation; FAR Case 2007–013, Employment Eligibility Verification

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Amendment to final rule; delay of applicability date.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have agreed to delay the applicability date of FAR Case 2007–013, Employment Eligibility Verification, to May 21, 2009.

DATES: *Applicability Date:* The applicability date of FAC 2005–29, Amendment–1, published January 14, 2009, 74 FR 1937, is delayed until May 21, 2009.

Contracting officers shall not include the new clause at 52.222–54, Employment Eligibility Verification, in any solicitation or contract prior to the applicability date of May 21, 2009.

On or after May 21, 2009, contracting officers—

- Shall include the clause in solicitations, in accordance with the clause prescription at 22.1803 and FAR 1.108(d)(1); and
- Should modify, on a bilateral basis, existing indefinite-delivery/indefinite-quantity contracts in accordance with FAR 1.108(d)(3) to include the clause for future orders if the remaining period of performance extends beyond November 21, 2009, and the amount of work or number of orders expected under the remaining performance period is substantial.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for further information pertaining to status or publication schedule. Please cite FAC 2005–29 (delay of applicability date).

SUPPLEMENTARY INFORMATION: This document extends to May 21, 2009, the applicability date of the E-Verify rule, in order to permit the new Administration an adequate opportunity to review the rule.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–29, Amendment-2, is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

The Federal Acquisition Regulation (FAR) contained in FAC 2005–29 is effective January 19, 2009, and applicable May 21, 2009.

Dated: January 27, 2009.

Linda W. Neilson,

Deputy Director, Defense Procurement (Defense Acquisition Regulations System).

Dated: January 26, 2009

Rodney P. Lantier,

Acting Senior Procurement Executive & Acting Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer, U.S. General Services Administration.

Dated: January 26, 2009.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E9–2060 Filed 1–27–09; 4:15 pm]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 090115024–9027–01]

RIN 0648–XM80

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen for 15 days in an area totaling approximately 1,725 nm^2 (5,917 km^2) east of Portsmouth, New Hampshire. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours February 2, 2009, through 2400 hours February 17, 2009.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in order to protect right whales and is

applicable to areas north of 42° 30′ N. lat. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm2 (139 km2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On January 10, 2009, a vessel survey reported an aggregation of 7 right whales in the general proximity of 43° 02 N latitude and 70° 15' W longitude. The position lies 30nm east of Portsmouth, New Hampshire, in the vicinity of Jeffreys Ledge. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15-day restricted period unless it is modified in the manner described in this temporary rule.

The DAM zone is bounded by the following coordinates:

43° 24′ N., 70° 20′ W. (NW Corner)
43° 24′ N., 69° 44′ W.
42° 40′ N., 69° 44′ W.
42° 40′ N., 70° 37′ W. following the shoreline northward to
42° 41′ N., 70° 46′ W.
42° 58′ N., 70° 46′ W. following the shoreline northward to
43° 03′ N., 70° 44′ W.
43° 04′ N., 70° 36′ W.
43° 24′ N., 70° 20′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster trap/pot gear

Fishermen utilizing lobster trap/pot gear within portions of Northern Inshore State Trap/Pot Waters, Northern Nearshore Trap/Pot Waters, and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of sinking line. Floating groundlines are prohibited;
2. All buoy lines must be made of sinking line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area and the Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of sinking line. Floating groundlines are prohibited;
2. All buoy lines must be made of sinking line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. The breaking strength of each net panel weak link must not exceed 1,100 lb (498.8 kg). The weak link requirements apply to all variations in net panel size. One weak link must be placed in the center of the floatline and one weak link must be placed in the center of each of the up and down lines at both ends of the net panel. Additionally, one weak link must be placed as close as possible to each end of the net panels on the floatline; or, one weak link must be placed between floatline tie-loops between net panels and one weak link must be placed where the floatline tie-loops attach to the bridle, buoy line, or groundline at each end of a net string;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours February 2, 2009, through 2400 hours February 17, 2009, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and

mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: January 15, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E9–2018 Filed 1–27–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XM85

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 6 a.m., local time, January 30, 2009, through 6 a.m., January 19, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Susan.Gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with run-around gillnets and hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

The southern subzone is that part of the Florida west coast subzone, which from November 1 through March 31, extends south and west from 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL, boundary) to 25°20.4′ N. lat. (a line directly east from the Monroe/Miami-Dade County, FL, boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone

which is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL, boundary) and 25°48′ N. lat. (a line directly west from the Collier/Monroe County, FL, boundary), i.e., the area off Collier County (50 CFR 622.42(c)(1)(i)(A)(*3*)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using run-around gillnet gear in the southern Florida west coast subzone was reached on January 29, 2009. Accordingly, the commercial fishery for king mackerel for such vessels in the southern Florida west coast subzone is closed at 6 a.m., local time, January 30, 2009, through 6 a.m., January 19, 2010, the beginning of the next fishing season, i.e., the day after the 2010 Martin Luther King Jr. Federal holiday.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

NMFS also finds good cause that the implementation of this action cannot be delayed for 30 days. There is a need to implement this measure in a timely fashion to prevent a quota overrun of the commercial run-around gillnet fishery for king mackerel in the southern Florida west coast subzone, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be contrary to the Magnuson-Stevens Act and the FMP. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: January 27, 2009.

Emily H. Menashes,

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

[FR Doc. E9–2017 Filed 1–27–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XM83

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Participating in the Amendment 80 Limited Access Fishery in Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels participating in the Amendment 80 limited access fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 halibut bycatch allowance specified for the trawl Pacific cod fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 20, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 halibut bycatch allowance specified for the trawl Pacific cod fishery category by vessels participating in the Amendment 80 limited access fishery for the Pacific cod fishery category in the BSAI is 1 metric ton as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) and as posted as the 2009 Allocations at *http://alaskafisheries.noaa.gov/sustainablefisheries/amds/80/2009allocationtables.pdf*.

In accordance with § 679.21(e)(3)(vi)(B) and § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2009 halibut bycatch allowance specified for the trawl Pacific cod fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI will be caught. Consequently, NMFS is closing directed fishing for Pacific cod by vessels participating in the Amendment 80 limited access fishery in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by vessels participating in the Amendment 80 limited access fishery in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 8, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: January 16, 2009.

Emily H. Menashes,

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

[FR Doc. E9–2023 Filed 1–27–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XM87

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2009 total allowable catch (TAC) of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2009, through 1200 hrs, A.l.t., March 10, 2009.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2009 TAC of pollock in Statistical Area 610 of the GOA is 3,234 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008) and inseason adjustment (74 FR 233, January 5, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2009 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,200 mt, and is setting aside the remaining 34 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 20, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 22, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–2024 Filed 1–27–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XM81

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2009 A season total allowable catch (TAC) of Atka mackerel in these areas for vessels participating in the BSAI trawl limited access fishery. NMFS is also announcing the opening and closing dates of the first and second directed fisheries within the harvest limit area (HLA) in Statistical Areas 542 and 543. These actions are necessary to conduct directed fishing for Atka mackerel in the HLA in areas 542 and 543.

DATES: The effective dates are provided in Table 1 under the **SUPPLEMENTARY INFORMATION** section of this temporary action.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 A season TAC of Atka mackerel for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea was established as 244 metric tons (mt) by the final 2008 and 2009 harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) and as posted as the 2009 Allocations at *http://alaskafisheries.noaa.gov/sustainablefisheries/amds/80/2009allocationtables.pdf.*

In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 244 mt of the 2009 A season Atka mackerel TAC for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea will be necessary as incidental catch to support other anticipated groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing

allowance of 0 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the A season BSAI trawl limited access fishery.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543, 48 hours after prohibiting directed fishing for Atka mackerel in the Eastern Aleutian Island District and the Bering Sea subarea. The Regional Administrator has established the opening date for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either area 542 or 543. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under Table 1 of this notice.

TABLE 1. EFFECTIVE DATES AND TIMES

Action	Area	Effective Date[1]	
		From	To
Closing Atka Mackerel for vessels participating in the BSAI trawl limited access fishery	Eastern Aleutian District (541) and the Bering Sea subarea	1200 hrs, January 20, 2009	1200 hrs, September 1, 2009
Opening the first and second directed fishery in the HLA for the Amendment 80 cooperative	542	1200 hrs, January 22, 2009	1200 hrs, February 3, 2009
	543	1200 hrs, February 5, 2009	1200 hrs, February 17, 2009
Opening the first and second directed fishery in the HLA for vessels participating in the Amendment 80 limited access sector	542 and 543	1200 hrs, January 22, 2009	1200 hrs, February 1, 2009
	542 and 543	1200 hrs, February 3, 2009	1200 hrs, February 13, 2009
Opening the first directed fishery in the HLA for the vessel participating in the BSAI trawl limited access sector	542	1200 hrs, January 22, 2009	1200 hrs, February 3, 2009

[1]Alaska local time

In accordance with § 679.20(a)(8)(iii)(A) and § 679.20(a)(8)(iii)(B), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS (74 FR 1946, January 14, 2009) and in an upcoming (January 2009, RIN 0648-XM68) correction. The correction's publication date and page number are unknown at this time.

In accordance with the final 2008 and 2009 harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) and correction (73 FR 47559, August 14, 2008), and § 679.20(a)(8)(ii)(C)(*1*), the HLA limits of the A season allowance of the 2009 TACs in areas 542 and 543 are 2,943 mt and 2,179 mt, respectively, for vessels participating in the Amendment 80 limited access fishery. The HLA limits of the A season allowance of the 2009 TACs in areas 542 and 543 are 1,941 mt and 1,355 mt, respectively, for Amendment 80 cooperatives. The HLA limit of the A season allowance of the 2009 TAC in area 542 is 203 mt for the BSAI trawl limited access vessel. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed in Table 1 of this notice.

After the effective dates of these closures, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery and the opening and closing of the fisheries for the HLA limits established for area 542 and area 543 pursuant to the 2009 Atka mackerel TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 14, 2009. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 15, 2009.

Emily H. Menashes,

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

[FR Doc. E9–2027 Filed 1–27–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XM88

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2009 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2009, through 1200 hrs, A.l.t., March 10, 2009.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2009 TAC of pollock in Statistical Area 630 of the GOA is 2,503 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008) and inseason adjustment (74 FR 233, January 5, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2009 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,400 mt, and is setting aside the remaining 103 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 20, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 22, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–2022 Filed 1–27–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 19
Friday, January 30, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1350]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board is requesting public comment on proposed amendments to Regulation D, Reserve Requirements of Depository Institutions, to authorize the establishment of limited-purpose accounts at Federal Reserve Banks (''Reserve Banks'') for the maintenance of excess balances of eligible institutions (both as defined in Regulation D). These excess balance accounts (''EBAs'') would contain only the excess balances of the eligible institutions participating in such accounts, although the participating eligible institutions (''EBA Participants'') would authorize another institution (''EBA Agent'') to manage the EBA on their behalf. The authorization of EBAs is intended to allow eligible institutions to earn interest on their excess balances at the excess balance rate in an account relationship directly with the Federal Reserve Bank as counterparty without disrupting established business relationships with their correspondents. Continuing strains in financial markets and the configuration of interest rates support the implementation of EBAs; however, the Board will evaluate the continuing need for EBAs when more normal market functioning is restored. The Board seeks comment on all aspects of the proposal.

DATES: Comments must be submitted by March 2, 2009.

ADDRESSES: You may submit comments, identified by Docket No. R–1350, by any of the following methods:

Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

Fax: (202) 452–3819 or (202) 452–3102.

Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Counsel (202/452–3565), or Dena L. Milligan, Staff Attorney (202/452–3900), Legal Division, or Seth Carpenter, Deputy Associate Director (202/452–2385), or Margaret Gillis DeBoer, Section Chief (202/452–3139), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background—Interest on Reserves

Section 128 of the Emergency Economic Stabilization Act of 2008, enacted on October 3, 2008 (the ''2008 Act''), accelerated the effective date of the authority for the Reserve Banks to pay earnings on balances maintained at the Reserve Banks by or on behalf of depository institutions. The 2008 Act made this authority effective on October 1, 2008. This authority was originally enacted in Title II of the Financial Services Regulatory Relief Act of 2006 (the ''2006 Act'') (Pub. L. 109–351, 120 Stat. 1966 (Oct. 13, 2006)), with an original effective date of October 1, 2011. The 2006 Act provides that such earnings must be paid at least once each quarter at a rate or rates not to exceed the general level of short-term interest rates. The 2006 Act also provides that the Board may prescribe regulations concerning the payment of earnings, the distribution of earnings to the depository institutions that maintain balances or on whose behalf balances are maintained, and the responsibilities of correspondents to distribute and credit earnings on balances maintained by the respondent on a pass-through basis with the correspondent.

On October 9, 2008, the Board published in the **Federal Register** an interim final rule amending Regulation D (Reserve Requirements of Depository Institutions) to direct the Reserve Banks to pay interest on balances held at Reserve Banks to satisfy reserve requirements (''required reserve balances'') and balances held in excess of required reserve balances and clearing balances (''excess balances'') (73 FR 59482) (Oct. 9, 2008). At that time, the Board announced two formulas by which the amount of earnings payable on required reserve balances and excess balances would be calculated. For required reserve balances, the Board set the initial formula for the rate of interest to be the average federal funds rate target established by the Federal Open Market Committee (the ''FOMC'') over the reserve maintenance period less 10 basis points. For excess balances, the Board set the initial formula for the rate of interest to be the lowest federal funds rate target established by the FOMC in effect during the reserve maintenance period minus 75 basis points. The Board stated that it might adjust the formula for the interest rate on excess balances in light of experience and evolving market conditions. The Board has subsequently adjusted the formula for the rate of interest for excess balances three times and the rate of interest on required reserve balances twice. The rate of interest on both required reserve balances and on excess balances currently is equal to ¼ percent. The Board may from time to time determine any other rate or rates for such balances, which would be announced when determined.

II. Maintenance of Required Reserve Balances and Excess Balances

Under Regulation D, a depository institution must maintain reserves against its reservable liabilities in the form of cash in its vault or, if vault cash is insufficient, in the form of a balance in an account at a Reserve Bank.[1] 12 CFR 204.3(b)(1). A depository institution may maintain such balances in an account in its own name at a Reserve Bank, or it may choose a pass-through correspondent through which it may pass through its required reserve balance. The pass-through correspondent holds its respondents' required reserve balances in an account of the correspondent at a Reserve Bank. Under Regulation D, the balance in a pass-through correspondent's account at a Reserve Bank is deemed to be the property of the pass-through correspondent exclusively, and the account balance represents a liability of the Reserve Bank solely to the pass-through correspondent, regardless of whether the funds represent the required reserve balances of another institution that have been passed through the pass-through correspondent. 12 CFR 204.3(i)(2).

Under the Board's October interim final rule, any excess balances in a pass-through correspondent's account are deemed to be balances held on behalf of its respondents. Reserve Banks credit the pass-through correspondent's account with the interest on the required reserve balances and excess balances of the pass-through correspondent's respondents. The October interim final rule permits, but does not require, correspondents to pass back the interest earned to their respondents.

III. Implications in the Current Market Environment

The respondents of a pass-through correspondent can, by agreement with the correspondent, receive earnings on their excess balances by directing the correspondent to sell those balances in the federal funds market, or by having the correspondent hold those balances in the correspondent's account at a Reserve Bank under a pass-through arrangement. These two approaches have different implications for the correspondent's balance sheet and its leverage ratio for capital adequacy purposes.

As noted above, Regulation D currently deems the entire balance in a pass-through correspondent's account at a Reserve Bank to be the exclusive property of the pass-through correspondent and to represent a liability of that Reserve Bank to the pass-through correspondent exclusively. Therefore, the pass-through correspondent must show the entire balance in its Reserve Bank account on its own balance sheet as an asset, even if the balance consists, in whole or in part, of amounts that are passed through on behalf of a respondent.[2]

Accordingly, when a correspondent's respondents want to earn interest on excess balances by leaving them with their correspondent (which in turn passes those balances through to the Reserve Bank), the correspondent has a larger balance at the Reserve Bank. As a result, the correspondent has more assets on its balance sheet and a lower leverage ratio for capital adequacy purposes.

In contrast, when the correspondent sells the respondent's federal funds on the respondent's behalf, the respondent directs its correspondent to transfer funds to the entity purchasing federal funds. This transaction is effected by a debit to the correspondent's account at a Reserve Bank and a credit to the purchaser's account at a Reserve Bank. On the correspondent's balance sheet, all other things being equal, the correspondent's assets decline (as does its liability to its respondent) because the correspondent's account balance at the Reserve Bank is lower and therefore its regulatory leverage ratio would be higher.

Since the implementation of interest on excess balances through the October interim final rule, the actual federal funds rate has generally averaged significantly below the interest rate paid by the Reserve Banks on excess balances, although this spread narrowed significantly after the FOMC established a range for the federal funds rate of 0 to ¼ percent on December 16. When the market rate of interest on federal funds is below the rate paid by the Reserve Banks on excess balances, respondents have an incentive to shift the investment of their surplus funds away from sales of federal funds (through their correspondents acting as agents), and toward holding funds directly as excess balances with the Reserve Banks, potentially disrupting established correspondent-respondent relationships. A correspondent could offer to purchase federal funds directly from its respondents and hold those funds as excess balances at a Reserve Bank; however, such transactions could result in a significant reduction in regulatory leverage ratios for some correspondents. The Board believes that the disparity between the actual federal funds rate and the rate paid by Reserve Banks on excess balances may partly be caused by the leverage incentives imposed on correspondent institutions to sell excess balances into the federal funds market rather than maintaining those balances in an account at a Reserve Bank.

IV. EBA Proposal

The Board is proposing to authorize the establishment of EBAs to reduce disruptions in established relationships between correspondents and their respondents that would result from a shift by those respondents away from federal funds sales and toward holding excess balances in individual accounts at the Reserve Banks. These disruptions appear to be directly related to the current configuration of interest rates and the unprecedented volume of excess balances provided through the Federal Reserve's open market operations and liquidity facilities. When more normal market functioning resumes, the Board would re-evaluate the continuing need for EBAs.

The Board proposes to authorize EBAs with the following characteristics.

A. Account Structure

EBAs would be established by the EBA Participants. One possible application of this structure would be that the respondent institutions of a particular correspondent could become EBA Participants by establishing an EBA for the maintenance overnight of their aggregate excess balances. The EBA would be established at the Reserve Bank where the EBA Agent (discussed below) maintains its own master account. All EBA Participants would be required to be the type of institution that is eligible, as defined in the 2008 Act, to receive interest on their excess balances.[3] Any eligible institution could be an EBA Participant.

[1] The 2006 Act amended section 19 of the Act to authorize member banks to enter into pass-through account arrangements. Prior to the 2006 Act, only nonmember banks were authorized to enter into such arrangements. *See* Notice of Proposed Rulemaking, Request for Public Comment, 73 FR 8009 (Feb. 12, 2008).

[2] The same would be true of a correspondent that was not acting in a pass-through capacity: its entire account balance at the Reserve Bank would be an asset on the correspondent's own balance sheet. Regulation D, however, does not specifically address correspondents other than pass-through correspondents.

[3] The 2008 Act permits Federal Reserve Banks to pay interest on balances held by or on behalf of ''depository institutions,'' but the 2008 Act's definition of ''depository institution'' has a broader meaning than the definition of that term in section 19(b)(1)(A) of the Act and Regulation D. Therefore, the Board believed that a different term would be useful to refer only to those institutions included in the 2008 Act's broader definition of ''depository institution.'' In its October 9, 2008 notice of

Continued

As noted above, Regulation D currently provides that balances in a pass-through correspondent's account at a Reserve Bank represent a liability of the Reserve Bank solely to that pass-through correspondent, even though that account may also contain funds that are attributable to one or more of the pass-through correspondent's respondent institutions. With the EBA, however, all balances in the EBA would be deemed to be the property solely of the EBA Participants, and to represent a liability of the Reserve Bank to the EBA Participants alone and not to the EBA Agent. Because the excess balances of EBA Participants in EBAs would be the Reserve Bank's direct liability to the EBA Participants, the adverse leverage impact of such arrangements on correspondents would be mitigated.

B. Authority to Manage Account

The EBA Participants of an EBA would be required to authorize one institution (which may or may not be an ''eligible institution'' but that must have its own account at a Reserve Bank) to manage the EBA on behalf of the EBA Participants, including giving instructions for the transfer of EBA Participants' excess balances in and out of the EBA. The EBA Agent would not be allowed to commingle its own funds in the EBA. The EBA Agent would be required to have its own account at a Federal Reserve Bank. The EBA Agent could be, but need not be, a correspondent institution that serves the EBA Participants as its respondents under a correspondent, or pass-through correspondent, arrangement. This EBA Agent would be authorized to place EBA Participant excess balances into the EBA, remove those excess balances, and generally manage the EBA (which may include facilitating the opening of the EBA on behalf of EBA Participants). The EBA Agent would be responsible for determining amounts of excess balances to deposit into the EBA and for maintaining adequate records to demonstrate the level of excess balances in the EBA of each EBA Participant. The Reserve Banks would calculate interest on an EBA on an aggregate basis and would not calculate an interest amount for each EBA Participant. The EBA Participants would be responsible for instructing the EBA Agent with respect to the disposition of the interest and the balances, of the EBA Participant in the EBA—presumably within the context of any applicable correspondent-respondent agreement, taking into account all of the services and other terms and conditions of the relationship.

C. Limited-Purpose Properties of Account

The EBA would exist for the sole purpose of holding excess balances of EBA Participants, generally on an overnight basis. The EBA would not be permitted to be overdrawn at any time, either intra-day or overnight. Balances maintained overnight in an EBA would not satisfy a required reserve balance or a contractual clearing balance for any EBA Participant or for the EBA Agent. The EBA could not be used for general payments or other activities.

D. Payment of Interest on EBAs

Excess balances maintained in an EBA would earn interest at the excess balances rate specified in section 204.10(b)(2) of Regulation D. The Board's interim final rule published in the **Federal Register** on October 9 defines ''excess balances'' as an institution's balances in an account at a Reserve Bank in excess of the institution's required reserve balance (which may be zero) and the institution's contractual clearing balance (if any). The October 9 interim final rule also provides that interest on required reserve balances and excess balances is credited to eligible institutions 15 days after the close of the applicable reserve maintenance period. Under Regulation D, the reserve maintenance period is the period during which a depository institution must maintain, on average, its required reserve balance. For institutions with reservable liabilities below the exemption amount or those with only a contractual clearing balance, the reserve maintenance period is one week long. The Board would compute average balances in an EBA during a one-week maintenance period that begins on Thursday and ends the following Wednesday and would credit interest to the EBA fifteen (15) days after the close of the one-week maintenance period. The EBA Agent would be responsible for disbursing interest in the EBA in accordance with the directions given by each EBA Participant to the EBA Agent for such disbursements.

V. Section-by-Section Analysis

Section 204.10(d)(6)

Proposed section 204.10(d)(6) adds a new subsection to section 204.10(d), which sets forth definitions relating to the payment of interest on reserves and other balances maintained at Reserve Banks. Proposed section 204.10(d)(6) adds the term ''excess balance account'' as a defined term in Regulation D. Section 204.10(d) defines ''excess balance account'' as an account at a Reserve Bank established by one or more eligible institutions and in which only excess balances of the participating eligible institutions may at any time be maintained. Proposed section 204.10(d)(6) also clarifies that such an account is not a ''pass-through account'' for purposes of Regulation D. This clarification is appropriate because a pass-through account represents a liability of a Reserve Bank solely to a correspondent institution, whereas the liability represented by an EBA represents a liability of the Reserve Bank solely to the institutions whose excess balances are maintained in the EBA.

Section 204.10(e)(1)

Proposed section 204.10(e)(1) provides that eligible institutions may establish an EBA at a Reserve Bank when the EBA is (A) established by the eligible institutions and is (B) established solely for the purpose of maintaining overnight excess balances of the participating eligible institutions. Proposed section 204.10(e)(1) also provides that balances maintained in such an account are the property of the eligible institutions that participate in the EBA, and represent a liability of the Reserve Bank solely to those institutions. Proposed section 204.10(e)(1) is intended to distinguish such account arrangements from the definition and operation of the term ''pass-through account'' elsewhere in Regulation D.

Section 204.10(e)(2)

Proposed section 204.10(e)(2) sets forth the regulatory provisions relating to the appointment and authorization of an EBA Agent to manage an EBA on behalf of EBA Participants. The EBA Agent must have its own account at a Reserve Bank unless otherwise determined by the Board. Proposed section 204.10(e)(2) also provides that an EBA Agent must not commingle any of its own funds in an EBA at any time, either intra-day or overnight.

proposed rulemaking, the Board proposed using the term ''eligible institution'' to refer to institutions that are eligible to receive interest on their balances maintained at Federal Reserve Banks. ''Eligible institution'' includes the depository institutions defined in section 19(b)(1)(A) of the Act, including banks, savings associations, savings banks and credit unions that are federally insured or eligible to apply for federal insurance. ''Eligible institution'' also includes trust companies, Edge and agreement corporations, and U.S. agencies and branches of foreign banks. The definition does not include all entities for which the Reserve Banks hold accounts, such as entities for which the Reserve Banks act as fiscal agents, including Federal Home Loan Banks.

Section 204.10(e)(3)

Proposed section 204.10(e)(3) specifies that balances maintained in an EBA must consist solely of excess balances of EBA Participants, and that such balances will not satisfy any institution's required reserve balance or contractual clearing balance.

Section 204.10(e)(4)

Proposed section 204.10(e)(4) specifies that an EBA is for the exclusive purpose of maintaining EBA Participants' excess balances and is not be used for general payments or other activities.

Section 204.10(e)(5)

Proposed section 204.10(e)(5) provides that balances in an EBA would earn interest at the rate specified for ''excess balances'' in current section 204.10(b)(2) of Regulation D.

VI. Form of Comment Letters

Comment letters should refer to Docket No. R–1350 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov*.

VII. Solicitation of Comments Regarding Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 (12 U.S.C. 4809) requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the interim final rule is clearly stated and effectively organized, and how the Board might make the text of the rule easier to understand.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency that is issuing a proposed rule to prepare and make available an initial regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). 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 will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 605(b) of the RFA, the Board certifies that this interim final rule will not have a significant adverse economic impact on a substantial number of small entities. The proposed rule would permit, but does not require, institutions to establish EBAs at Reserve Banks. The impact on institutions choosing to establish EBAs at Reserve Banks would be positive and not adverse, because EBA Participants would be able to earn the rate payable on excess balances in a debtor-creditor relationship directly with a Reserve Bank without disrupting established correspondent-respondent relationships. Likewise, the impact would be positive and not adverse on institutions that choose to establish EBAs but are not currently in a correspondent-respondent relationship, as such institutions would be expected to establish EBAs only to the extent that EBA Agents and EBA Participants found it mutually beneficial to do so.

IX. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The proposed rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is proposing to amend 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 6105.

2. Section 204.10 is amended by adding new paragraphs (d)(6) and (e) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(d) * * *

(6) *Excess balance account* means an account at a Reserve Bank pursuant to § 204.10(e) of this part that is established by one or more eligible institutions and in which only excess balances of the participating eligible institutions may at any time be maintained. An excess balance account is not a ''pass-through account'' for purposes of this part.

(e) *Excess balance accounts.* (1) Establishing an excess balance account. A Reserve Bank may establish an excess balance account for eligible institutions under the provisions of this paragraph. Notwithstanding any other provisions of this part, the excess balances of eligible institutions in an excess balance account are the property of the eligible institutions that participate in the account, and represent a liability of the Reserve Bank solely to those participating eligible institutions.

(2) The participating eligible institutions in an excess balance account shall authorize another institution to act as agent of the eligible institutions for purposes of general account management, including but not limited to transferring the excess balances of participating institutions in and out of the excess balance account. The agent must maintain its own separate account at a Reserve Bank unless otherwise determined by the Board. The agent may not commingle its own funds in the excess balance account.

(3) No reserve balances or clearing balances of any institution may be maintained at any time in an excess balance account, and balances maintained in an excess balance account will not satisfy any institution's required reserve balance or contractual clearing balance.

(4) An excess balance account may be used exclusively for the purpose of maintaining the excess balances of participants and may not be used for general payments or other activities.

(5) Interest shall be paid on excess balances of eligible institutions maintained in an excess balance account in accordance with § 204.10(b)(2) of this part.

By order of the Board of Governors of the Federal Reserve System, January 25, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–1996 Filed 1–29–09; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management for Cape Hatteras National Seashore

AGENCY: National Park Service (NPS), Interior.

ACTION: Notice of Thirteenth Meeting.

SUMMARY: Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of the

thirteenth meeting of the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore.

DATES: The Committee will hold its thirteenth meeting on February 26–27, 2009, from 8:30 a.m. to 10 p.m. both days, if needed. The meeting will be held at the Wright Brothers National Memorial Pavilion, 1000 Croatan Highway (Milepost 7.6), Kill Devil Hills, North Carolina 25948.

These, and any subsequent meetings, will be held for the following reason: To work with the National Park Service to assist in potentially developing special regulations for off-road vehicle (ORV) management at Cape Hatteras National Seashore (Seashore).

The proposed agenda for the thirteenth meeting of the Committee may contain the following items: Approval of Meeting Summary from Last Meeting, Subcommittee and Members' Updates since Last Meeting, Alternatives Discussions, NEPA Update, and Public Comment. However, the Committee may modify its agenda during the course of its work. The meetings are open to the public. Interested persons may provide brief oral/written comments to the Committee during the public comment period of the meetings each day before the lunch break or may file written comments with the Park Superintendent.

FOR FURTHER INFORMATION CONTACT: Michael B. Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954, (252) 473–2111, ext. 148.

SUPPLEMENTARY INFORMATION: The Committee's function is to assist directly in the development of special regulations for management of ORVs at the Seashore. Executive Order 11644, as amended by Executive Order 11989, requires certain Federal agencies to publish regulations that provide for administrative designation of the specific areas and trails on which ORV use may be permitted. In response, the NPS published a general regulation at 36 CFR 4.10, which provides that each park that designates routes and areas for ORV use must do so by promulgating a special regulation specific to that park. It also provides that the designation of routes and areas shall comply with Executive Order 11644, and 36 CFR 1.5 regarding closures. Members of the Committee will negotiate to reach consensus on concepts and language to be used as the basis for a proposed special regulation, to be published by the NPS in the **Federal Register**, governing ORV use at the Seashore. The duties of the Committee are solely advisory.

Dated: January 13, 2009.

Michael B. Murray,

Superintendent, Cape Hatteras National Seashore.

[FR Doc. E9–2043 Filed 1–29–09; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OPPT–2008–0627; FRL–8401–3]

RIN 2070–AJ44

Formaldehyde Emissions from Pressed Wood Products; Extension of Comment Period and Notice of Sixth Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: EPA issued an advanced notice of proposed rulemaking (ANPR) in the **Federal Register** of December 3, 2008, describing EPA's initial steps to investigate and request comment, information, and data relating to formaldehyde emissions from pressed wood products. The ANPR also announced five public meetings that EPA scheduled in order to obtain additional stakeholder input. EPA is announcing today one additional public meeting to enable more complete public participation. Additionally, this document extends the comment period for 45 days, from February 2, 2009, to March 19, 2009. This extension is necessary to provide the public with an opportunity to provide additional and more thorough comments to the docket.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0627, must be received on or before March 19, 2009.

The meeting will be held on March 4, 2009, from 1 p.m. until the last speaker has spoken or to 5 p.m.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of December 3, 2008, for the submission of comments.

The meeting will be held at the Sheraton New Orleans Hotel, 500 Canal St., New Orleans, LA.

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: Cindy Wheeler, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0484; e-mail address: *wheeler.cindy@epa.gov*.

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** of December 3, 2008 (73 FR 73620) (FRL–8386–3). In that document, EPA announced its plans to begin its investigation of formaldehyde emissions from pressed wood products and the Agency's intention to involve stakeholders in gathering information to better inform EPA's decision making process. EPA also planned 5 half-day public meetings in January of 2009. The purpose of these meetings was to receive stakeholder comments on the issue of formaldehyde emissions from pressed wood products, including the questions described in the December 3, 2008 **Federal Register** document, and on future opportunities for public participation on this issue. To enable more complete public participation EPA is also adding an additional public meeting in New Orleans, LA, on March 4, 2009, from 1 p.m. until the last speaker has spoken or to 5 p.m. in the Sheraton New Orleans Hotel, 500 Canal St. Additionally, EPA is hereby extending the comment period, which was set to end on February 2, 2009, to March 19, 2009.

To submit comments, or access the public docket, please follow the detailed instructions as provided under **ADDRESSES** in the December 3, 2008 **Federal Register** document. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Housing, Toxic substances, Wood.

Dated: January 26, 2009.

James Jones,

Acting Assistant Administrator, Office of Pesticides, Prevention and Toxic Substances.

[FR Doc. E9–2030 Filed 1–27–09; 4:15 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 268, 270 and 273

[EPA–HQ–RCRA–2007–0932; FRL–8769–7]

RIN 2050–AG39

Amendment to the Universal Waste Rule: Addition of Pharmaceuticals; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is announcing the extension of the comment period until March 4, 2009, on the proposed rule entitled, Amendment to the Universal Waste Rule: Addition of Pharmaceuticals published on December 2, 2008. The Agency is soliciting comments as described in that document on the proposed addition of hazardous pharmaceutical wastes to the federal universal waste program.

DATES: The comment period for this proposed rule is extended from the original closing date of February 2, 2009, to March 4, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2007–0932, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2007–0932. EPA's policy is that all comments received will be included in the public 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 *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 RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Lisa Lauer, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–7418; fax number: (703) 605–0595; e-mail address *lauer.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is extending the comment period by 30 days in response to requests from the Northeast Waste Management Officials' Association, Waste Management, Pharmecology® Associates, LLC, Healthcare Distribution Management Association, Clean Harbors Environmental Services and the Environmental Technology Council for more time to submit comments on the proposed rule, which was published in the **Federal Register** on December 2, 2008 (73 FR 73520). Therefore, the public comment period will now close on March 4, 2009.

This notice has been developed by the Office of Resource Conservation and Recovery. EPA's Office of Solid Waste was recently renamed the Office of Resource Conservation and Recovery. For further information, please see: *http://www.epa.gov/epawaste/basicinfo.htm.*

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Packaging and containers, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Hazardous materials transportation, Reporting and recordkeeping requirements.

40 CFR Part 273

Environmental protection, Hazardous materials transportation, Hazardous waste.

Dated: January 26, 2009.

Matt Hale,

Director, Office of Resource Conservation and Recovery.

[FR Doc. E9–2035 Filed 1–29–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 74, No. 19

Friday, January 30, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for 7 CFR 4287, subpart B, Servicing Business and Industry Guaranteed Loans.

DATES: Comments on this notice must be received by March 31, 2009 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: David Lewis, Business and Industry Loan Servicing Branch, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224, telephone (202) 690–0797, or by e-mail to *david.lewis@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Servicing Business and Industry Guaranteed Loan Servicing.

OMB Number: 0570–0016.

Expiration Date of Approval: June 30, 2009.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The purpose of the Business and Industry Guaranteed Loan Program is to improve, develop, or finance business, industry, and employment and to improve the economic and environmental climate in rural communities. The information requested is necessary and vital in order for the Agency to make prudent credit and financial decisions.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .85 hours per response.

Respondents: Guaranteed lenders.

Estimated Number of Respondents: 3,500.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 21,340.

Estimated Total Annual Burden on Respondents: 18,223.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the 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. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: *January 23, 2009.*

William F. Hagy III,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–1994 Filed 1–29–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4279, subpart A, Business and Industry Loans.

DATES: Comments on this notice must be received by March 31, 2009 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, Business and Industry Loan Servicing Branch, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224, telephone (202) 690–3802, or by e-mail to *brenda.griffin@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Business and Industry Loans.

OMB Number: 0570–0018.

Expiration Date of Approval: June 30, 2009.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. The collection information is necessary to assist Agency loan officers and approval officials in determining program eligibility and program monitoring.

Estimate of Burden: Public reporting for this collection of information is estimated to average 30 minutes to 12 hours per response.

Respondents: Business or other for-profit; State, Local or Tribal; Lenders, accountants, attorneys.

Estimated Number of Respondents: 750.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 1,037.

Estimated Total Annual Burden on Respondents: 1,494.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0035.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the 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. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: *January 23, 2009.*

William F. Hagy III,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–1995 Filed 1–29–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the United States Department of Agriculture (USDA) Rural Development administers rural utilities programs through the Rural Utilities Service. The USDA Rural Development invites comments on the following information collections for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 31, 2009.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

Title: Telecommunications Standards and Specifications, 7 CFR Part 1755.

OMB Control Number: 0572–0132.

Type of Request: Extension of a currently approved collection.

Abstract: To protect the security of loans it makes and to ensure that the telecommunications services provided to rural Americans are comparable to those offered in urban and suburban areas, USDA Rural Development establishes the minimum acceptable performance criteria for materials and equipment to be employed on telecommunications systems financed by USDA Rural Development. These specifications cover a variety of materials and equipment, ranging from multipair cables for direct burial to highly sophisticated computerized central office switches. Manufacturers, wishing to sell their products to USDA Rural Development borrowers, request RUS consideration for acceptance of their products and submit data demonstrating their products' compliance with USDA Rural Development specification.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.68.

Estimated Total Annual Burden on Respondents: 1400 hours.

Title: Telecommunications Field Trials.

OMB Control Number: 0572–0133.

Type of Request: Extension of a currently approved collection.

Abstract: To protect the equity of loans it makes, the USDA Rural Development Telecommunications Program establishes the minimum acceptable performance criteria for materials and equipment to be employed on telecommunication systems financed by USDA Rural Development. These specifications cover a variety of materials and equipment, ranging from multipair cables for direct burial in the earth, to highly sophisticated, computerized central office digital switches. Manufacturers wishing to sell their products to USDA Rural Development borrowers, request USDA Rural Development consideration for acceptance of their products and submit data demonstrating their products' compliance with USDA Rural Development specifications and that the products are otherwise acceptable for use on rural telecommunications systems. The review and determination of product acceptability is made to help assure that the products will perform properly and provide service lives that assure reliable revenue incomes and repayment of USDA Rural Development loans funds in a manner consistent with the terms and conditions of the USDA Rural Development loan. Unacceptable products may fail prematurely and interrupt service, require costly replacements, and reduce revenues. Without this collection, USDA Rural Development has no means of determining the acceptability of

advanced technology in a manner that is timely enough for USDA Rural Development borrowers to take advantage of the improved benefits and promise that such products may provide for rural America.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 3.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Burden on Respondents: 54 hours.

Title: Request for Approval to Sell Capital Assets.

OMB Control Number: 0572–0020.

Type of Request: Extension of a currently approved collection

Abstract: A borrower's assets provide the security for a government loan. The selling of assets reduces the security and increases the risk to the government. RUS Form 369 allows the borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sales of a portion of the borrower's systems. USDA Rural Development electric utility borrowers complete this form to request USDA Rural Development approval in order to sell capital assets when the fair market value exceeds 10 percent of the borrower's net utility plant.

Estimate of Burden: Public Reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions; Business or other for profit.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 15 hours.

Title: Mergers and Consolidations of Electric Borrowers, 7 CFR 1717, subpart D.

OMB Control Number: 0572–0114.

Type of Request: Extension of a currently approved collection.

Abstract: The RE Act of 1936, as amended (7 U.S.C. 901 *et seq.*), authorizes the Agency to make and guarantee loans for rural electrification. Due to deregulation and restructuring activities in the electric industry, USDA Rural Development borrowers find it advantageous to merge or consolidate to meet the challenges of industry change. This information collection addresses the requirements of USDA Rural Development policies and procedures for mergers and consolidations of electric program borrowers.

Estimate of Burden: Public reporting burden for this collection is estimated to average 1.32 hours per response.

Respondents: Not-for-profit institution; business or other for-profit.

Estimated Number of Respondents: 12.

Estimated Number of Responses per Respondent: 10.8.

Estimated Total Annual Burden on Respondents: 170 hours.

Dated: January 26, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–1957 Filed 1–29–09; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete products and service previously furnished by such agencies.

Comments Must Be Received on or Before: 3/1/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the numbered statement(s) above about which they are providing additional information.

End of Certification

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 8105–00–NIB–1301—Bag, Sand, Digital Camouflage.
NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products.
Coverage: B-list for the broad Government requirement as specified by the General Services Administration.

NSN: 7520–00–NIB–1790—Pen, Retractable .7MM Black (Vista Secure Gel).
NSN: 7520–00–NIB–1972—Pen, Retractable .7MM Blue (Vista Secure Gel).
NPA: Industries of the Blind, Inc., Greensboro, NC.
Contracting Activity: Federal Acquisition Service, GSA/FSS Ofc Sup Ctr—Paper Products.
Coverage: A-list for the total Government requirement as aggregated by the General Services Administration.

Liner, Parka, U.S. Navy

NSN: 8415–01–539–3971—XSMALL–XShort.
NSN: 8415–01–539–3988—SMALL–XShort.
NSN: 8415–01–539–3990—MEDIUM–XShort.
NSN: 8415–01–539–3997—LARGE–XShort.
NSN: 8415–01–539–4001—XSMALL–Short.
NSN: 8415–01–539–4011—SMALL–Short.
NSN: 8415–01–539–4028—MEDIUM–Short.
NSN: 8415–01–539–4031—LARGE–Short.
NSN: 8415–01–539–4041—XLARGE–Short.
NSN: 8415–01–539–4045—XSMALL–Reg.
NSN: 8415–01–539–4049—SMALL–Reg.

NSN: 8415–01–539–4056—MEDIUM–Reg.
NSN: 8415–01–539–4058—LARGE–Reg.
NSN: 8415–01–539–4109—XLARGE–Reg.
NSN: 8415–01–539–4114—2XLARGE–Reg.
NSN: 8415–01–539–4119—XSMALL–LONG.
NSN: 8415–01–539–4609—SMALL–LONG.
NSN: 8415–01–539–4619—MEDIUM–LONG.
NSN: 8415–01–539–4625—LARGE–LONG.
NSN: 8415–01–539–4631—XLARGE–LONG.
NSN: 8415–01–539–4635—2XLARGE–LONG.
NSN: 8415–01–539–4658—SMALL–Xlong.
NSN: 8415–01–539–4664—MEDIUM–Xlong.
NSN: 8415–01–539–4667—LARGE–Xlong.
NSN: 8415–01–539–4671—XLARGE–Xlong.
NSN: 8415–01–539–4677—2XLarge–Xlong.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia.
Coverage: C-list for the remaining portion (beyond three years and above 735,000 units) of the government requirement for the Defense Supply Center Philadelphia, Philadelphia, PA.

Service

Service Type/Location: Facility Support Operations, Fort Polk, LA, Directorate of Public Works, Fort Polk, LA.
NPA: PRIDE Industries, Roseville, CA.
Contracting Activity: Dept of the Army, XR W6BB ACA Polk.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for deletion from the Procurement List.

End of Certification

The following product and service are proposed for deletion from the Procurement List:

Product

Presentation Sheets, ''SmartChart''

NSN: 7520–01–483–8986—Presentation Sheets, ''SmartChart Pro.''
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity: GSA/FSS Ofc Sup Ctr—Paper Products, New York, NY.

Service

Service Type/Location: Recycling/Recovery Service, McConnell, 22 CONS/LGC, McConnell AFB, KS.
NPA: MCDS Federal Contracting, Inc., McPherson, KS.
Contracting Activity: Dept of the Air Force, FA4621 22 CONS LGC.

Barry S. Lineback,

Acting Director, Program Operations.

[FR Doc. E9–2032 Filed 1–29–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 3/2/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, *Telephone:* (703) 603–7740, *Fax:* (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 10/3/2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (Vol. 73 FR, No.193, page 57590) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and impact of the addition on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.
2. The action will result in authorizing small entities to furnish the product to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

Bag, Sand, Polypropylene, 26″ × 14″, Tan
NSN: 8105–01–336–6163—Bag, Sand, Polypropylene, 26″ × 14″, Tan
NPA: Southeast Vocational Alliance, Inc., Houston, TX
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia.
Coverage: C-list remaining 50% of the government requirement for the Defense Supply Center Philadelphia, Philadelphia, PA requirement.

Barry S. Lineback,

Acting Director, Program Operations.

[FR Doc. E9–2033 Filed 1–29–09; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Licensing Responsibilities and Enforcement

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 31, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be

directed to Larry Hall, BIS ICB Liaison, (202)482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection supports the various collections, notifications, reports, and information exchanges that are needed by the Bureau of Industry and Security's (BIS) Office of Export Enforcement and U.S. Customs to enforce the Export Administration Regulations (EAR) and maintain the National Security of the United States. This collection of information involves nine miscellaneous activities described in Section 758 of the EAR that are associated with the export of items controlled by the Department of Commerce. Most of these activities do not involve submission of documents to the BIS but instead involve exchange of documents among parties in the export transaction to insure that each party understands its obligations under U.S. law. Others involve writing certain export control statements on shipping documents or reporting unforeseen changes in shipping and disposition of commodities.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0122.
Form Number(s): None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 1,427,450.
Estimated Time per Response: 5 seconds to 2 hours and 30 minutes, depending on the required document(s).
Estimated Total Annual Burden Hours: 77,926.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–1952 Filed 1–29–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Implementation of the Findings of the WTO Panel in United States—Antidumping Measure on Shrimp From Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp From Thailand

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

SUMMARY: On January 12, 2009, the Department of Commerce (the Department) issued a determination regarding the offsetting of dumped sales with non-dumped sales when making average-to-average comparisons of export price and normal value in the antidumping duty investigation of certain frozen warmwater shrimp challenged by Thailand before the World Trade Organization (WTO). On January 16, 2009, the U.S. Trade Representative (USTR) instructed the Department to implement in whole this determination under section 129 of the Uruguay Round Agreements Act (URAA). The Department is now implementing this determination.

DATES: *Effective Date:* The effective date of this determination is January 16, 2009.

FOR FURTHER INFORMATION CONTACT: Henry Almond or Shawn Thompson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–0049 or (202) 482–1776, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2008, the Department advised interested parties that it was initiating a proceeding under section 129 of the URAA to issue a determination that would implement the findings of the WTO dispute settlement panel in *United States—Measures Relating to Shrimp From Thailand,* WT/DS343/R (Feb. 29, 2008). On November 21, 2008, the Department issued its preliminary results, in which it recalculated the weighted-average dumping margins from the antidumping investigation of frozen warmwater shrimp from Thailand [1] by applying the calculation methodology described in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification,* 71 FR 77722 (Dec. 27, 2006). The Department also invited interested parties to comment on the preliminary results. After receiving comments and rebuttal comments from the interested parties, the Department issued its final results for the section 129 determination on January 12, 2009.

On January 16, 2009, consistent with section 129(b)(3) of the URAA, the USTR held consultations with the Department and the appropriate congressional committees with respect to this determination. Also on January 16, 2009, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, the USTR directed the Department to implement in whole this determination.

Nature of the Proceedings

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) provides that ''notwithstanding any provision of the Tariff Act of 1930,'' within 180 days of a written request from the USTR, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. *See* 19 U.S.C. 3538(b)(2). The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA) variously refers to such a determination by the Department as a ''new,'' ''second,'' and ''different'' determination. *See* SAA at 1025, 1027. After consulting with the Department and the appropriate congressional committees, the USTR may direct the Department to implement, in whole or in part, the new determination made under section 129. *See* 19 U.S.C. 3538(b)(4). Pursuant to section 129(c),

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From Thailand,* 70 FR 5145 (Feb. 1, 2005) (Thai Shrimp Order).

the new determination shall apply with respect to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which the USTR directs the Department to implement the new determination. *See* 19 U.S.C. 3538(c). The new determination is subject to judicial review separate and apart from judicial review of the Department's original determination. *See* 19 U.S.C. 1516a(a)(2)(B)(vii).

Analysis of Comments Received

The issues raised in the case and rebuttal briefs submitted by interested parties to this proceeding are addressed in the Final Results of Proceeding Under Section 129 of the URAA. *See* the January 12, 2009, ''Issues and Decision Memorandum for the Final Results'' from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated January 12, 2009 (Issues and Decision Memorandum), which is hereby adopted by this notice. The Issues and Decision Memorandum is on file in the Central Records Unit (CRU), room 1117 of the Department of Commerce main building and can be accessed directly at *http://ia.ita.doc.gov/download/section129/full-129-index.html.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content. A list of the issues addressed in the Issues and Decision Memorandum is appended to this notice.

Final Antidumping Margins

The recalculated margins, unchanged from the preliminary results, are as follows:

Manufacturer/Exporter	Amended final determination (percent)	Re-calculated margins (percent)
The Rubicon Group (Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Intersia Foods Co., Ltd., Phatthana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., and Wales & Co. Universe Limited)	5.91	[1] 1.94
Thai I-Mei Frozen Foods Co., Ltd.	5.29	[1] 1.81
The Union Frozen Products Co., Ltd.	6.82	5.34
All Others	5.95	5.34

[1] de minimis.

Implementation

On January 16, 2009, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, the USTR directed the Department to implement this determination, effective January 16, 2009. Accordingly, we will instruct U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation for all shipments of frozen warmwater shrimp produced and exported by one or more of the members of the Rubicon Group (*i.e.*, Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Intersia Foods Co., Ltd., Phatthana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., and Wales & Co. Universe Limited), as well as shipments of frozen warmwater shrimp produced and exported by Thai I-Mei Frozen Foods, Co., Ltd., entered or withdrawn from warehouse, for consumption on or after the effective date of this determination. Further, the Department will instruct CBP to liquidate without regard to antidumping duties (release all bonds and refund all cash deposits) entries of frozen warmwater shrimp produced and exported by these entities, entered, or withdrawn from warehouse, for consumption on or after the effective date of this determination. Additionally, the Department will instruct CBP to change the ''all-others'' cash deposit rate from 5.95 percent ad valorem to 5.34 percent ad valorem.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: January 26, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Issues Raised in the Issues and Decision Memorandum

Comment 1: Whether the Department of Commerce (the Department) Has the Authority to Implement a Determination Pursuant to Section 129 of the URAA

Comment 2: Whether the Preliminary Results are Consistent with U.S. Law

Comment 3: Alternative Calculation Methodologies

Comment 4: Effective Date of Implementation

Comment 5: The Rubicon Group Companies Subject to this Proceeding

[FR Doc. E9–2086 Filed 1–29–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Initiation of New Shipper Review

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

DATES: *Effective Date:* January 30, 2009.

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China (''PRC''), received on December 22, 2008, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is June 1, 2008, through November 30, 2008.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Charles Riggle AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 482–6412 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on chlorinated isocyanurates from the PRC was published on June 24, 2005. *See Notice of Antidumping Duty Order: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 36561 (June 24, 2005). On December 22, 2008, we received a timely request for a new shipper review from Juancheng Kangtai Chemical Co., Ltd. (''Kangtai'') in accordance with 19 CFR 351.214(c) and 351.214(d)(2). Kangtai has certified that it produced all of the chlorinated isocyanurates it exported which is the basis for its request for a new shipper review.

Pursuant to the requirements set forth in 19 CFR 351.214(b)(2)(i), in its request for a new shipper review, Kangtai, as an exporter and producer, certified that (1) it did not export chlorinated isocyanurates to the United States during the period of investigation (''POI''); (2) since the initiation of the investigation, Kangtai has never been affiliated with any company that exported subject merchandise to the United States during the POI; and (3) its export activities were not controlled by the central government of the PRC.

In accordance with 19 CFR 351.214(b)(2)(iv), Kangtai submitted documentation establishing the following: (1) The date on which it first shipped chlorinated isocyanurates for export to the United States and the date on which the chlorinated isocyanurates were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the ''Act'') and 19 CFR 351.214(d)(1), we find that the request submitted by Kangtai meets the threshold requirements for initiation of a new shipper review for shipments of chlorinated isocyanurates from the PRC produced and exported by Kangtai. *See* Memorandum to the File through Wendy Frankel, Office Director, New Shipper Initiation Checklist, dated January 21, 2009. The POR is June 1, 2008, through November 30, 2008. *See* 19 CFR 351.214(g)(1)(i)(B). The Department will conduct this review according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Kangtai, which will include separate rate sections. The review will proceed if the response provides sufficient indication that Kangtai is not subject to either *de jure* or *de facto* government control with respect to its export of chlorinated isocyanurates.

On August 17, 2006, the Pension Protection Act of 2006, Public Law 109–280, (''H.R. 4''), was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new shipper reviews during the period April 1, 2006, through June 30, 2009. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of chlorinated isocyanurates exported and produced by Kangtai must continue to post a cash deposit of estimated antidumping duties on each entry of subject merchandise at the PRC-wide rate of 285.63 percent.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: January 21, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–2077 Filed 1–29–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; 2009 Coastal Resource Management Customer Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 31, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Chris Ellis at NOAA Coastal Services Center, (843) 740–1195 or *Chris.Ellis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In continuing compliance with Executive Order 12862, Setting Customer Service Standards, this survey will be used by the NOAA Coastal Services Center to obtain information from customers—state and territorial coastal resource managers—about their natural resource management issues, their needs for information, training, and technical assistance, and their technical capabilities in order to make quality improvements to the Center's products and services.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0308.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 167.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–1946 Filed 1–29–09; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Initiation of Review of Management Plan/Regulations of the Fagatele Bay National Marine Sanctuary; Intent To Prepare Draft Environmental Impact Statement and Management Plan; Scoping Meetings

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Initiation of Review of Management Plan/Regulations; Intent To Prepare Environmental Impact Statement; Scoping Meetings.

SUMMARY: Fagatele Bay National Marine Sanctuary (FBNMS or Sanctuary) was designated in April of 1986 in response to a proposal from the American Samoa Government to the (then) National Marine Sanctuary Program. FBNMS protects 163 acres (0.25 square miles) of vibrant tropical coral reef ecosystem off the southwest coast of Tutuila Island, American Samoa. The present management plan was written as part of the sanctuary designation process and published in the Final Environmental Impact Statement in 1984. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the FBNMS management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, to initiate discussions on possible site expansion, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA. NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the Sanctuary's management plan and regulations, and possible site expansion (including expansion to include the Rose Atoll Marine National Monument designated on January 6, 2009). The scoping meetings are scheduled as detailed below.

DATES: Written comments should be received on or before March 26, 2009.

Scoping meetings will be held on:

(1) February 10th, 4–6:30 p.m., Convention Center, Utulei, Tutuila, American Samoa.

(2) February 11th, 4–6:30 p.m., Fagaitua High School Gym, Fagaitua, Tutuila, American Samoa.

(3) February 12th, 4–6:30 p.m., American Samoa Community College, Mapusaga, Tutuila, American Samoa.

ADDRESSES: Written comments may be sent to the Fagatele Bay National Marine Sanctuary (Management Plan Review), P.O. Box 4318, Pago Pago, American Samoa 96799; or faxed to (808) 397–2662. Electronic comments may be sent to *fagatelebay@noaa.gov.*

Comments will be available for public review at the following street address: Fagatele Bay National Marine Sanctuary, 1 Convention Center Circle, Pago Pago, American Samoa 96799. All comments received are a part of the public record. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kevin Grant, 808.397.2660 Ext. 238, *fagatelebay@noaa.gov.*

SUPPLEMENTARY INFORMATION: The proposed revised management plan will likely involve changes to existing policies of the Sanctuary in order to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: (1) Information collection and characterization; (2) preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; (3) public review and comment; and (4) preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. In the event that the potential impacts of new actions described in the management plan do not warrant the need for an environmental impact statement, NOAA will publish the appropriate environmental analysis and notify the public. Depending upon the complexity and level of any site expansion, NOAA anticipates completion of the revised management plan and concomitant documents will require approximately thirty-six to forty-eight months.

Preliminary Priority Topics

NOAA, in consultation with the American Samoa Department of Commerce, has prepared a list of preliminary priority topics. This list represents our best professional judgment of the most important issues NOAA should consider in preparation of a new FBNMS management plan. We are interested in the public's comments on these topics, as well as any other topics of interest to the public or other agencies. It is important to note that this list does not preclude or in any way limit the consideration of additional topics raised through public comment, government-to-government consultations, and discussions with partner agencies.

Improved Partnerships—Recent initiatives regarding marine managed areas provide the Sanctuary with new opportunities to strengthen partnerships, particularly with Territorial and Federal agencies, the American Samoa Community College, and other entities. The Sanctuary will work in active partnership to provide a more transparent, cooperative, and coordinated management structure of marine resources within Territorial and federal jurisdictions.

Characterization and Monitoring—There is a need to develop an understanding of baseline conditions of marine resources within the sanctuary, ecosystem functions, and status and trends of biological and socioeconomic

resources to effectively inform management. FBNMS, in conjunction with Territorial and Federal agencies as well as other entities, will work to resolve these needs.

Spill Prevention, Contingency Planning and Response—The risk from vessel traffic and other hazards is a significant threat to marine resources. The potential for a catastrophic oil spill remains a primary concern and while advances in maritime safety have been made since the sanctuary was designated, better coordination is needed for response to these threats. Oil spills cause immediate and potentially long term harm to marine resources as well as socioeconomic impacts to coastal communities.

Climate Change—Climate change is widely acknowledged, yet there is considerable uncertainty about current and future consequences at local, ecosystem, and oceanic scales. Increased coordination and cooperation among resource management agencies is required to improve planning, monitoring, and adaptive management to address this phenomenon.

Ocean Literacy—Enhancing the public's awareness and appreciation of marine, socio-economic, and cultural resources is a cornerstone of the Sanctuary's mission. Management Plan Review could offer opportunities for the Sanctuary, in conjunction with the American Samoa Community College and other entities, to expand educational contributions and reach a larger audience.

Marine Debris—Coastal marine debris is a persistent and poorly diagnosed problem within the sanctuary that negatively impacts natural and socioeconomic resources and qualities.

Site Expansion—The Office of National Marine Sanctuaries (ONMS), under the authority of the National Marine Sanctuaries Act, has the ability to develop protections for special areas of the marine environment, including those found in federal waters. Any possible expansion of the ONMS activities, such as the expansion of the Sanctuary to include the newly designated Rose Atoll Marine National Monument, could supplement and compliment existing MPA initiatives in the Territory. Working cooperatively with partner agencies, will allow all parties to leverage resources and find the best solutions to protecting the marine resources of the Territory.

Condition Report

In preparation for management plan review, NOAA produced a Fagatele Bay National Marine Sanctuary Condition Report in 2007. The Condition Report provides a summary of resources in FBNMS, pressures on those resources, the current condition and trends, and management responses to the pressures that threaten the integrity of the marine environment. Specifically, the Condition Report includes information on the status and trends of water quality, habitat, living resources, and maritime archaeological resources and the human activities that affect them. The report serves as a supporting document for the Management Plan Review Process to inform constituents who desire to participate in that process.

In addition, a State of the Sanctuary Report was completed for 2002–2003. This report outlines major accomplishments and highlights specific management plan activities. An update covering accomplishments from 2003–2008 has also been created. The condition report, State of the Sanctuary Report and the 2003–2008 Update are available to the general public in advance of scoping meetings and on the internet at: *http://fagatelebay.noaa.gov/html/management_plan.html*.

Scoping Comments

Scoping meetings provide an opportunity to make direct comments to NOAA on the management of the sanctuary's natural and cultural resources, including administrative programs. We encourage the public to participate and welcome any comments related to the sanctuary. In particular, we are interested in hearing about the public's view on:

- The Sanctuary's potential management priorities for the next five to ten years;
- Effectiveness of the existing management plan in protecting sanctuary resources;
- Sanctuary programs, activities and needs, including but not limited to resource protection programs, research and monitoring programs, education, volunteer, and outreach programs;
- Implementation of regulations and permits;
- Adequacy of existing boundaries to protect sanctuary resources;
- Assessment of the existing operational and administrative framework (staffing, offices, vessels, etc.).

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 26, 2009.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. E9–2092 Filed 1–29–09; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM63

Magnuson–Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notification of a proposal to conduct exempted 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 exempted fishing permit (EFP) application submitted by the Gulf of Maine Research Institute (GMRI), which would exempt participating vessels from Scallop gear restrictions, possession restrictions, Great South Channel (GSC) Southern New England (SNE)/Georges Bank (GB) Yellowtail Flounder Peak Spawning Closure restrictions, and GSC Cape Cod (CC)/Gulf of Maine (GOM) Yellowtail Flounder Peak Spawning Closure restrictions, should be issued for public comment. 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 Sea Scallop Fishery Management Plan (FMP), the Northeast Multispecies FMP, and other Northeast Regional FMPs. However, further review and consultation may be necessary before a final determination is made.

DATES: Comments must be received on or before February 17, 2009.

ADDRESSES: Comments may be submitted by e–mail. The mailbox address for providing e–mail comments is *scallop.efp.gmri@noaa.gov*. Include in the subject line of the e–mail comment the following document identifier: ''Comments on twine–top EFP.'' Written comments may also be mailed 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 twine–top EFP.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Cheryl McGarrity, Fishery Management Specialist, phone: 978–281–9174, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: In response to the 2008 Atlantic Sea Scallop Research Set Aside (RSA) Program request for proposals, NMFS received a proposal from GMRI entitled, ''An evaluation of hanging ratio and mesh orientation of twine–tops on selectivity and bycatch in the general category scallop dredge fishery in scallop limited access areas.'' The grant was approved by NOAA Grants on July 27, 2008, as NOAA Award No. NA08NMF4540667. GMRI proposes to determine if changes to the dredge twine–top configuration on a 10.5–ft (3.2 m) general category scallop dredge will affect species selectivity and reduce finfish bycatch.

Comparisons of catches will be made between panels with twine–top configurations of 2:1 hanging ratio, 3:1 hanging ratio with meshes elongated in the fore/aft direction, and 3:1 hanging ratio with meshes elongated laterally (perpendicular to the fore/aft direction). Research is to be conducted within the Elephant Trunk Access Areas (March/April 2009) and the Great South Channel Scallop Dredge Exemption Area (GSCDEA) (May/June 2009). Three general category scallop vessels using New Bedford style scallop dredges will be given a set of the three twine–top configurations, and will use one configuration per day for 12 days. It is expected that three tows per day will be completed, and vessels will spend 12 days in each of the two scallop access areas. The grant authorizes GMRI to land 14,400 lb (6,531.73 kg) of scallops each from the Elephant Trunk Access Area and GSCDEA (total of 28,800 lb (13,063.46 kg)), with the proceeds from landed scallops compensating participating vessel owners and defraying research costs. Vessels will stay within the daily landing limit of 400 lb (181.4 kg).

This EFP would exempt participating vessels from Scallop gear restrictions specified at 50 CFR 648.51(b)(2), possession restrictions found throughout part 648, Great South Channel (GSC) Southern New England (SNE)/Georges Bank (GB) Yellowtail Flounder Peak Spawning Closure restrictions at § 648.80(a)(18)(ii)(C), and GSC Cape Cod (CC)/Gulf of Maine (GOM) Yellowtail Flounder Peak Spawning Closure restrictions at § 648.80(a)(18)(ii)(D).

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. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

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

Dated: January 26, 2009.

Emily H. Menashes

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

[FR Doc. E9–1999 Filed 1–29–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XM97

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting of the North Pacific Fishery Management Council's Scallop Plan Team.

SUMMARY: The North Pacific Fishery Management Council (Council) Scallop Plan Team will meet February 20–21, 2009, in Anchorage, AK.

DATES: The meeting will be held on February 20, 2009, from 10:30 a.m. to 5 p.m. and February 21, 2009, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, Fireweed Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Agenda: Essential Fish Habitat (EFH) description plan for revisions; Final Rule on Annual Catch Limits (ACLs) discussion of plans to revise Scallop FMP for ACL compliance; Review current regulations on VMS requirements; Review update on Scallop Observer Program; Review any pending BOF actions or regulatory changes; Status of Statewide Scallop Stocks and preparation of the SAFE report; Review ageing techniques and protocol issues and update; Review and revise research priorities.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, at (907) 271–2809, at least 7 working days prior to the meeting date.

Dated: February 27, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–2057 Filed 1–29–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 0812021556–9052–02

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Notice of Amended Solicitation of Applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces that it is extending the solicitation period for applications for the Public Telecommunications Facilities Program (PTFP) replacement digital television translator projects. NTIA will accept applications for these projects until Monday, May 18, 2009.

DATES: Applications for replacement digital television translator projects

must be received prior to 5 p.m. Eastern Daylight Time (Closing Time), Monday, May 18, 2009 (Closing Date). Applications submitted by facsimile will not be accepted. If an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Closing Time, (2) significant weather delays or natural disasters, or (3) delays due to national security issues, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. NTIA will not accept applications post-marked on May 18, 2009 or later and received after this deadline.

ADDRESSES: To obtain a printed application package, submit completed applications, or send any other correspondence, write to PTFP at the following address (please note the new room number): NTIA/PTFP, Room H–4812, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230. Application materials may be obtained electronically via the Internet at http://www.ntia.doc.gov/ptfp or http://www.grants.gov.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via the Internet at http://www.ntia.doc.gov/ptfp.

SUPPLEMENTARY INFORMATION: NTIA publishes this notice to announce that it is extending the solicitation period for applications for the Public Telecommunications Facilities Program (PTFP) replacement digital television translator projects. NTIA will accept applications for such projects until Monday, May 18, 2009. Any applications received between December 18, 2008 and May 18, 2009 will be considered timely and will be given full consideration.

On December 23, 2008, the FCC issued a Notice of Proposed Rulemaking for the creation of a new ''replacement'' digital television translator service to permit full-service television stations to continue to provide service to viewers within their coverage area who have lost service as a result of those stations' digital transition.[1] On December 30, 2008, the FCC announced that it would begin accepting applications for replacement digital television facilities on January 5, 2009. The FCC further announced that stations could apply for Special Temporary Authority to immediately operate replacement digital television translator facilities during the pendency of the rulemaking proceedings.[2]

Consistent with PTFP's purposes, NTIA is extending the solicitation period for applications for replacement digital television translators until May 18, 2009 so stations may apply for the financial assistance necessary to build facilities as permitted by these new FCC policies. Such applications will be placed in Subpriority A. While applicants may file requests for FCC authorizations with the FCC after the expiration of NTIA's closing date for applications for replacement digital television translator projects, applicants are reminded that no grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued. As noted in the Federal Funding Opportunity Notice of October 20, 2008, ''[t]ransmission equipment required by public television stations to complete their digital broadcast facilities will be considered in Broadcast Other, Subpriority A'' and that facilities ''should replicate the station's comparable analog Grade B coverage.''[3]

The new closing date of May 18, 2009 is consistent with the closing date for certain digital television Distributed Transmission System (DTS) projects for the FY 2009 PTFP grant round, which was announced on December 9, 2008.[4] DTS projects were authorized by the Federal Communications Commission (FCC) on November 3, 2008.[5]

Applications for replacement digital television translator projects will utilize the same forms, and undergo the same review and evaluation process contained in the PTFP Closing Date Notice of October 20, 2008.[6]

Dated: January 26, 2009.

Dr. Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. E9–1961 Filed 1–29–09; 8:45 am]

BILLING CODE 3510–60–S

[1] *See* Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations, MB Docket No. 08-253, *Notice of Proposed Rulemaking*, FCC 08-278 (rel., Dec. 23, 2008).

[2] ''Media Bureau Announces Application and STA Filing Procedures for New Digital Television Translators,'' Public Notice, Federal Communications Commission, DA 08-2818 (rel., Dec. 30, 2008), *available at* http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-08-2818A1.pdf.

[3] Announcement of Federal Funding Opportunity, National Telecommunications and Information Administration, FY 2009, U.S. Department of Commerce (Oct. 20, 2008), *available at* http://www.ntia.doc.gov/otiahome/ptfp/attachments/FFO_Notice_09.html.

[4] ''Public Telecommunications Facilities Program: Closing Date,'' 73 Fed. Reg. 74,709 (NTIA Dec. 9, 2008)(notice of amended closing date), *available at* http://www.ntia.doc.gov/otiahome/ptfp/pdfForms/NOA-PTFP-AMEND-FY09.pdf.

[5] Digital Television Distributed Transmission System Technologies, *Report and Order*, MB Docket No. 05-312, 2008 FCC LEXIS 7698, FCC 08-256 (rel., Nov. 7, 2008) (DTS Report and Order).

[6] ''Public Telecommunications Facilities Program: Closing Date,'' 73 Fed. Reg. 62,258 (NTIA Oct. 20, 2008)(notice), *available at* http://www.ntia.doc.gov/otiahome/ptfp/pdfForms/PTFP_Closing-Dte_FY09.pdf.

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, February 27, 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. E9–2187 Filed 1–28–09; 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, February 6, 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. E9–2188 Filed 1–28–09; 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, February 20, 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. E9–2189 Filed 1–28–09; 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, February 13, 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. E9–2190 Filed 1–28–09; 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: 2 p.m., Wednesday, February 18, 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. E9–2191 Filed 1–28–09; 4:15 pm]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled ''AmeriCorps Application Instructions: State Competitive, State Education Award Program, National Direct, National Direct Education Award Program, National Professional Corps, Indian Tribes, States and Territories without Commissions, and National Planning'' to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Amy Borgstrom at (202) 606–6930. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: 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 Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments: A 60-day public comment Notice was published in the **Federal Register** on Wednesday, October 15, 2008. This comment period ended December 15, 2008. Two sets of public comments were received from Corporation grantees. The Corporation gave full consideration to those comments and, for the most part, incorporated their suggested changes in the information collection form. In addition, the burden figure was raised from 24 to 40 hours based on public comment. The former burden figure was unreasonable given the emphasis in the application instructions on developing collaborative relationships and collecting data.

Description: The Corporation seeks to renew and revise the current AmeriCorps State and National Application Instructions. The Application Instructions are being revised for increased clarity and burden reduction. The Application Instructions will be used in the same manner as the existing Application Instructions. The Corporation also seeks to continue using the current Application Instructions until the revised Application Instructions are approved by OMB. The current form is due to expire on April 30, 2009.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps State and National Application Instructions.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Nonprofit organizations, State, Local and Tribal.

Total Respondents: 600 respondents.

Frequency: Annually.

Average Time per Response: 40 hours to apply.

Estimated Total Burden Hours: 24,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 23, 2009.

Lois Nembhard,

Acting Director, AmeriCorps State and National.

[FR Doc. E9–1972 Filed 1–29–09; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled ''AmeriCorps Member Application Form'' to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Amy Borgstrom at (202) 606–6930. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: 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 Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments:

A 60-day public comment Notice was published in the **Federal Register** on Wednesday, October 15, 2008. This comment period ended December 15, 2008. Two sets of public comments were received from Corporation grantees. The Corporation gave full consideration to those comments and, for the most part, incorporated their suggested changes in the information collection form.

Description: This Member Application Form will be used by applicants who are interested in serving as AmeriCorps members. The information requested in the application form makes it possible for programs to select members to serve. Programs also use this form as an example that they customize to develop their own recruitment materials. The Corporation also seeks to continue using the current Application Form until the revised Application Form is approved by OMB. The current form is due to expire on January 31, 2009.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Member Application Form.

OMB Number: 3045–0054.

Agency Number: None.

Affected Public: Applicants to serve in AmeriCorps.

Total Respondents: 225,000 applicants.

Frequency: Annually.

Average Time per Response: 1.5 hours to apply.

Estimated Total Burden Hours: 281,250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 26, 2009.

Kristin McSwain,

Chief of Program Operations, Corporation for National and Community Service.

[FR Doc. E9–1973 Filed 1–29–09; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, February 4, 2009, 10 a.m.–11:30 a.m.

PLACE: Corporation for National and Community Service; 8th Floor; 1201 New York Avenue, NW., Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks and Swearing in of New Member.
II. Consideration of Prior Meeting's Minutes.
III. CEO Report.
IV. Committee Reports.
V. Public Testimony on the Impact of the Economy on National Service Grantees.
VI. Honoring Departing Board Member.
VII. Public Comment.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5:00 p.m. Monday, February 4, 2009.

CONTACT PERSON FOR MORE INFORMATION: Lisa Guccione, Senior Policy Advisor, Office of the CEO, Corporation for National and Community Service, 10th Floor, Room 10207, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–6637. Fax (202) 606–3460. TDD: (202) 606–3472. E-mail: *lguccione@cns.gov.*

Dated: January 27, 2009.

Frank R. Trinity,

General Counsel.

[FR Doc. E9–2115 Filed 1–28–09; 11:15 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Defense Representative Guam, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia and Republic of Palau; Notice of Public Hearings for the Mariana Islands Range Complex Draft Environmental Impact Statement/Overseas Environmental Impact Statement

AGENCY: Department of Defense Representative Guam, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia and Republic of Palau.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA); the Council of Environmental Quality (CEQ) Regulations for implementing the procedural provisions of NEPA (Title 40 Code of Federal Regulations [CFR] Parts 1500–1508); and Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions, on behalf of the Department of Defense Representative Guam, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia and Republic of Palau (DoD REP), the U.S. Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement/ Overseas Environmental Impact Statement (EIS/OEIS) for the Mariana Islands Range Complex (MIRC) for public release on January 30, 2009.

The National Marine Fisheries Service (NMFS), the U.S. Department of the Interior, Office of Insular Affairs, the Federal Aviation Administration, the United States Marine Corps, and the United States Air Force (USAF) are cooperating agencies in the preparation of this EIS/OEIS.

The Draft EIS/OEIS evaluates the potential environmental impacts associated with the military readiness training; research, development, testing, and evaluation (RDT&E) activities; and associated range capabilities enhancements within the existing MIRC. A Notice of Intent for this Draft EIS/OEIS was published in the **Federal Register** on June 1, 2007 (72 FR 30557).

The Navy will conduct five public hearings to receive oral and written comments on the Draft EIS/OEIS. Federal agencies, state agencies, and local agencies and interested individuals are invited to be present or represented at the public hearings. This notice announces the dates and locations of the public hearings for this Draft EIS/OEIS.

DATES AND ADDRESSES: An open house session will start before the scheduled public hearing at each of the locations listed below and will allow individuals to review the information presented in the MIRC Draft EIS/OEIS. DoD REP, Navy and USAF representatives will be available during the open house sessions to clarify information related to the Draft EIS/OEIS. All meetings will include an open house session from 5 p.m. to 9 p.m. and a formal presentation and public comment period from 7 p.m. to 9 p.m. Public hearings will be held on the following dates and at the following locations:

1. Thursday, February 19, 2009, at the Jesus & Eugenia Leon Guerrero School of Business and Public Administration Building, The Anthony Leon Guerrero Multi-Purpose Room 129, University of Guam, Mangilao, Guam;

2. Friday, February 20, 2009, at the Southern High School Cafeteria, #1 Jose Perez Leon Guerrero Drive, Santa Rita, Guam;

3. Monday, February 23, 2009, at the Multi-Purpose Center in Susupe, Saipan;

4. Tuesday, February 24, 2009, at the Tinian Elementary School Cafeteria, San Jose Village, Tinian;

5. Thursday, February 26, 2009, at the Sinapolo Elementary School Cafeteria, Sinapolo, Rota.

FOR FURTHER INFORMATION CONTACT: Mariana Islands Range Complex EIS, 258 Makalapa Drive, Suite 100, Attn: EV2, Pearl Harbor, HI 96860–3134; e-mail at: *marianas.tap.eis@navy.mil.*

SUPPLEMENTARY INFORMATION: The MIRC Study Area is located in the Western Pacific (WESTPAC) and consists of three primary components: ocean surface and undersea areas; special use airspace (SUA); and training land areas. For the purposes of this EIS/OEIS, the MIRC and the Study Area are the same geographical areas consisting of land areas and offshore areas off the coast of Guam and the Commonwealth of Northern Mariana Islands (CNMI). The ocean surface and undersea areas of the MIRC extend from the international waters south of Guam to north of Pagan, CNMI, and from the Pacific Ocean east of the Mariana Islands to the middle of the Philippine Sea to the west, encompassing 501,873 square nautical miles of open ocean and littorals (coastal areas).

The MIRC Study Area does not include the sovereign territory (including waters out to 12 nautical miles) of the Federated States of Micronesia. Portions of the Marianas Trench Marine National Monument, which was established in January 2009 by Presidential Proclamation under the authority of the Antiquities Act (16 U.S.C. 431), lie within the Study Area. The range complex includes land ranges and training area/facilities on Guam, Rota, Tinian, Saipan, and Farallon de Medinilla (FDM), encompassing 64 square nautical miles of land. SUA consists of Warning Area 517 (W–517), restricted airspace over FDM (R–7201), and Air Traffic Control Assigned Airspace encompassing 63,000 square nautical miles of airspace.

The MIRC is used to support tactical training by the U.S. Military Services (Services), including Army, Navy, Marine Corps, Air Force, Coast Guard, Army Reserves, and Guam National Guard, in the WESTPAC Theater. The proposed action does not involve extensive changes to MIRC facilities, operations, training, or RDT&E capacities. Rather, the proposed action would result in relatively small-scale but critical enhancements to the MIRC that are necessary if the Services are to maintain a state of military readiness commensurate with their national defense mission. The recommended range enhancements, as well as current and future training and testing operations, that have the potential to impact the environment, are the primary focus of the EIS/OEIS.

The purpose for the Proposed Action is to achieve and maintain military readiness using the MIRC to support and conduct current, emerging, and future training and RDT&E activities while enhancing training resources through investment in the ranges.

The need for the Proposed Action is to enable the Services to meet their statutory responsibility to organize, train, equip, and maintain combat-ready forces and to successfully fulfill their current and future global mission of winning wars, deterring aggression, and maintaining freedom of the seas. Activities involving RDT&E are an integral part of this readiness mandate. In this regard, the MIRC furthers the Services' execution of their Congressionally-mandated roles and responsibilities under Title 10 U.S.C. 5062.

To implement this Congressional mandate, the Services need to: (1) Maintain mandated levels of military readiness training in the MIRC; (2) accommodate future increases in training tempo on existing ranges and adjacent air and ocean areas in the MIRC and support the rapid employment of military units or strike groups; (3) achieve and sustain readiness so that the Services can quickly surge required combat power in the event of a national crisis or contingency operation consistent with Service training requirements and airspace requirements for the deployment of future live fire ranges; (4) support the acquisition, testing, training, and fielding of advanced platforms and weapons systems into Service force structure; and, (5) maintain the long-term viability of the MIRC while protecting human health and the environment and enhancing the quality of training, communications and safety within the range complex.

Alternatives in this EIS/OEIS were evaluated to ensure they met the purpose and need, giving due consideration to range complex attributes such as the capability to

support current and emerging training and RDT&E requirements; the capability to support realistic, essential training at the level and frequency sufficient to support the Tactical Training Theater Assessment and Planning Program (TAP); and the capability to support training requirements while following Service Personnel Tempo of Operations guidelines.

The three alternatives analyzed in this EIS/OEIS are: the No Action Alternative—Current training activities; Alternative 1—Increase training, modernization and upgrades; and Alternative 2—Increase major at-sea exercises and training.

The No Action Alternative will continue training and RDT&E activities of the same types, and at the same levels of training intensity as currently conducted, without change in the nature or scope of military activities in the EIS/OEIS study area.

Alternative 1, the Preferred Alternative, is a proposal designed to meet the Services' current and near-term operational training requirements. This is the Preferred Alternative, because it would meet all near-term training requirements by increasing training activities, as a result of upgrades and modernization of existing training areas, and increasing the number of exercises. This alternative also includes increased activities due to meeting new training and capability requirements for personnel and platforms.

Implementation of Alternative 2 would include all the actions proposed for MIRC, including the No Action Alternative and Alternative 1, and new activities related to additional major at-sea exercises.

The decision to be made by the DoD REP is to determine which of the alternatives analyzed in the EIS/OEIS best meets the needs of the Services given that all reasonably foreseeable environmental impacts have been considered.

The Draft EIS/OEIS addresses potential environmental impacts on multiple resources, including but not limited to: water resources; air quality; marine mammals; sea turtles; fish and essential fish habitat; seabirds and shorebirds; cultural resources; regional economy; and public health and safety. The Draft EIS/OEIS identifies aspects of the proposed action that could act as stressors to these resources. The stressors considered for analysis of potential environmental consequences include but are not limited to: Vessel movements; aircraft overflights; non-explosive practice munitions; sonar; and underwater detonations and high explosive ordnance.

No significant impacts are identified for any resource area in any geographic location within the MIRC Study Area that cannot be mitigated, with the exception of exposure of marine mammals to underwater sound. The Navy has requested from NMFS a Letter of Authorization in accordance with the Marine Mammal Protection Act to authorize the incidental take of marine mammals that may result from the implementation of the activities analyzed in the MIRC Draft EIS/OEIS. In accordance with section 7 of the Endangered Species Act, the Navy is consulting with NMFS and U.S. Fish and Wildlife Service for potential impacts to federally listed species.

The MIRC Draft EIS/OEIS has been distributed to Federal, State, and local agencies, elected officials, and other interested individuals and organizations. In addition, copies of the Draft EIS/OEIS are available for public review at the following libraries: University of Guam Robert F. Kennedy Memorial Library, Government Documents Tan Siu Lin Building, UOG Station, Mangilao, GU 96923; Nieves M. Flores Memorial Library, 254 Martyr Street, Hagätňa, GU 96910; Rota Public Library, P.O. Box 879, Rota, MP 96951; Joeten-Kiyu Public Library, P.O. Box 501092, Saipan, MP 96950; and Northern Marianas College Public Library, P.O. Box 459, Tinian, MP 96952.

The Draft EIS/OEIS is also available for electronic public viewing or download at *http://www.MarianasRangeComplexEIS.com.* A paper copy of the Executive Summary or a single CD with the Draft EIS/OEIS will be made available upon written request by contacting Mariana Islands Range Complex EIS, 258 Makalapa Drive, Suite 100, Attn: EV2, Pearl Harbor, HI 96860–3134; e-mail at: *marianas.tap.eis@navy.mil.*

Written comments can be submitted during the open house sessions. Oral statements will be heard and transcribed by a stenographer during the hearing sessions; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the Draft EIS/OEIS and will be addressed in the Final EIS/OEIS. Equal weight will be given to both oral and written statements. In the interest of available time, and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes.

If a long statement is to be presented, it should be summarized at the public hearing with the full text submitted either in writing at the hearing; mailed to Mariana Islands Range Complex EIS, 258 Makalapa Drive, Suite 100, Attn: EV2, Pearl Harbor, HI 96860–3134; or e-mailed to *marianas.tap.eis@navy.mil.* In addition, comments may be submitted on-line at *http://www.MarianasRangeComplexEIS.com* during the comment period. All written comments must be postmarked by March 16, 2009, to ensure they become part of the official record. All timely comments will be addressed in the Final EIS/OEIS.

Dated: January 16, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–2048 Filed 1–29–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Treatment of the CNS for Status Epilepticus Due to Organophosphate Exposure

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/104,311 entitled "* * * Treatment of the CNS for Status Epilepticus Due to Organophosphate Exposure," filed October 10, 2008. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

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

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

SUPPLEMENTARY INFORMATION: The invention is a method of post exposure treatment for chemical warfare nerve agent or organophosphate induced seizure/status epilepticus and neuropathology. The method of treatment utilizes a specific blood-brain

barrier penetrating oxime. The administration of this oxime initiates the reactivation of the central nervous system cholinesterases (AChE and BChE) for pesticide and OP induced central nervous system (and peripherally) inhibited AChE.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–2034 Filed 1–29–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee 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 Education Advisory Committee (AEAC).

Date of Meeting: February 25, 2009.

Time of Meeting: 0900–1500.

Place of Meeting: Deputy Chief of Staff G–3/5/7 Conference Room, Building 161, Room 305, Ft. Monroe, VA.

Proposed Agenda: Purpose of the meeting is to allow review, discussions, and deliberations of actions and recommendations from five subcommittees: Defense Language Institute Foreign Language Center, Command and General Staff College Board of Visitors, Army War College Board of Visitors, Distance Learning/ Training Technology Applications Subcommittee, and the Reserve Officer Training Corps Subcommittee. Approved recommendations will be forwarded to the Office of the Administrative Assistant, Secretary of the Army, the appropriate Subcommittee's Alternate Designated Federal Official (ADFO), and the Subcommittee's decision maker.

FOR FURTHER INFORMATION CONTACT: For information please contact Mr. Wayne Joyner at *albert.wayne.joyner@us.army.mil* or (757) 788–5890. Written submissions are to be submitted to the following address: Army Education Advisory Committee, ATTN: Designated Federal Officer (DFO) (Joyner), 5 Fenwick Road, building 161, room 217, Fort Monroe, Virginia 23651.

SUPPLEMENTARY INFORMATION: Meeting of the Advisory Committee is open to the public. Attendance will be limited to those persons who have notified the Committee Management Office at least 10 calendar days prior to the meeting of their intention to attend.

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 Committee. Individuals submitting a written statement must submit their statement to the DFO at the address listed (see **FOR FURTHER INFORMATION CONTACT**). Written statements not received at least 10 calendar days prior to the meeting, may not be provided to or considered by the committee. The DFO will review all timely submissions with the Chairperson, and ensure they are provided to the members of the committee before the meeting. After reviewing written comments, the Chairperson and the DFO may choose to invite the submitter of the comments to orally present their issue during open portion of this meeting or at a future meeting. The DFO, in consultation with the Chairperson, may allot a specific amount of time for the members of the public to present their issues for review and discussion.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–2031 Filed 1–29–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Sacramento River Bank Protection Project Phase II Supplemental Authority providing for implementation of up to 80,000 linear feet of additional bank protection in the Sacramento River Flood Control Project area, Butte, Colusa, Contra Costa, Glenn, Placer, Sacramento, Solano, Sutter, Tehama, Yolo, and Yuba Counties, CA

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

ACTION: Notice of intent.

SUMMARY: The action being taken is the preparation of a joint environmental impact statement/environmental impact report (EIS/EIR) for the Sacramento River Bank Protection Project (SRBPP) Phase II Supplemental Authority. The SRBPP Phase II Supplemental Authority will result in the implementation of an additional 80,000 linear feet of bank protection in the Sacramento River Flood Control Project area, as authorized by the Water Resources Development Act (WRDA) of 2007. The SRBPP Phase II Supplemental Authority is located in the Sacramento River Flood Control Project (SRFCP) area, consisting of the Sacramento River and its Tributaries, CA.

DATES: A series of public scoping meetings will be held as follows:

1. Tuesday, February 17, 2009, 6 to 8 p.m. at Colusa Fairgrounds, Atwood Hall (1303 10th Street, Colusa).
2. Wednesday, February 18, 2009, 6 to 8 p.m. at Jean Harvie Community and Senior Center (14273 River Road, Walnut Grove).
3. Tuesday, February 24, 2009, 4 to 6 p.m. at Library Galleria (828 ''I'' Street, Sacramento).
4. Wednesday, February 25, 2009, 6 to 8 p.m. at the Chico Masonic Family Center (110 West East Avenue, Chico).

Send written comments by March 16, 2009 to the address below.

ADDRESSES: Written comments and suggestions concerning this project may be submitted to Mr. Matthew Davis, U.S. Army Corps of Engineers, Sacramento District, Attn: CESPK–PD–R, 1325 J Street, Sacramento, CA 95814–2922. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS/EIR should be addressed to Matthew Davis at (916) 557–6708, by e-mail *Matthew.G.Davis@usace.army.mil,* by fax (916) 557–7856, or by mail to (*see* **ADDRESSES**).

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers, Sacramento District (Corps) is the federal lead agency for compliance with the National Environmental Policy Act (NEPA) for the Proposed Action. The Central Valley Flood Protection Board of the State of California (CVFPB) is the state lead agency for compliance with the California Environmental Quality Act (CEQA) for the Proposed Action.

1. *Proposed Action.* Section 3031 of the Water Resources Development Act (WRDA) of 2007 authorizes the U.S. Army Corps of Engineers and its local sponsors to construct an additional 80,000 linear feet of bank protection in the SRBPP area. The Corps and the CVFPB are preparing an EIS/EIR to analyze the impacts of constructing an additional 80,000 linear feet of bank protection in the SRBPP area in the form

of bank stabilization, employing primarily riprap, and levee setbacks where feasible.

The planning area for the proposed actions is considered to be the entire Sacramento River Flood Control Project, and the Corps' current inventory of critical eroding sites will constitute a representative sample of the sites to eventually be treated. As streambank erosion is episodic and new critical sites can appear each year, the environmental analysis will be programmatic in nature allowing for future environmental impact analysis for specific projects, as needed.

2. *Alternatives.* The EIS/EIR will address the No Action alternative and five action alternatives including four different types of bank protection alternatives and a levee setback alternative. The four types of bank protection alternatives differ from one another in the amount and extent of rock protection placed and the environmental features (e.g., vegetation and instream woody material) incorporated in the design.

3. *Scoping Process.*

a. A series of public scoping meetings will be held in February 2009 to present information to the public and to receive comments from the public. These meetings are intended to initiate the process to involve concerned individuals, and local, State, and Federal agencies.

b. Significant issues to be analyzed in depth in the EIS/EIR include effects on river meander, hydraulics, wetlands and other waters of the U.S., vegetation and wildlife resources, special-status species, aesthetics, cultural resources, recreation, land use, fisheries, water quality, air quality, noise, transportation, visual resources, and socioeconomics; and cumulative effects of related projects in the study area.

c. The Corps will consult with the State Historic Preservation Officer to comply with the National Historic Preservation Act and the U.S. Fish and Wildlife Service and National Marine Fisheries Service to comply with the Endangered Species Act. The Corps is also coordinating with the U.S. Fish and Wildlife Service to comply with the Fish and Wildlife Coordination Act.

d. A 45-day public review period will be provided for individuals and agencies to review and comment on the draft EIS/EIR. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the draft EIS/EIR circulation.

4. *Availability.* The draft EIS/EIR is scheduled to be available for public review and comment in October 2010.

Dated: January 22, 2009.

Thomas C. Chapman,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. E9–2036 Filed 1–29–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Record of Decision for Atlantic Fleet Active Sonar Training

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON), after carefully weighing the operational and environmental consequences of the proposed action, announces its decision to designate areas along the East Coast of the United States and in the Gulf of Mexico where mid- and high-frequency active (MFA and HFA) sonar and the improved extended echo ranging (IEER) system training; maintenance; and research, development, test, and evaluation (RDT&E) activities will occur, and to conduct these activities. The Navy's decision regarding MFA sonar activities includes the advanced extended echo ranging (AEER) system as a replacement for the IEER system. The Navy considered applicable executive orders, including an analysis of the environmental effects of its actions outside the United States or its territories under Executive Order (EO) 12114, *Environmental Effects Abroad of Major Federal Actions*, and the requirements of EO 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*.

The proposed action will be accomplished as set forth in the No-Action Alternative, described in the Final Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) as the preferred alternative. Implementation of the preferred alternative could begin immediately. The preferred alternative represents the active sonar training and RDT&E activities necessary for Navy to meet its Title 10 obligation to organize, train, equip and maintain combat-ready naval forces and to successfully fulfill its current and future global mission of winning wars, deterring aggression, and maintaining freedom of the seas.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) has been distributed to all those individuals who requested a copy of the Final EIS/OEIS and agencies and organizations that received a copy of the Final EIS/OEIS. The complete text of the Navy's ROD is available for public viewing on the project Web site at *http://www.afasteis.gcsaic.com*, along with copies of the Final EIS/OEIS and supporting documents. Single copies of the ROD will be made available upon request by contacting Naval Facilities Engineering Command, Atlantic, Attention: Code EV22 (AFAST Project Manager), 6506 Hampton Boulevard, Norfolk, VA 23508–1278.

Dated: January 27, 2009.

A. M. Vallandingham

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–2052 Filed 1–29–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Record of Decision for Southern California Range Complex

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON), after carefully weighing the operational, and environmental consequences of the proposed action, announces its decision to support and conduct current, emerging, and future military readiness activities in the Southern California (SOCAL) Range Complex, to include San Clemente Island (SCI), as necessary to achieve and sustain Fleet readiness, including Navy training; Department of Defense (DoD) or other federal agency research, development, test, and evaluation (RDT&E) activities; and investment in range resources and range infrastructure, all in furtherance of the Navy's statutory obligations under Title 10 of the United States Code governing the roles and responsibilities of the Navy. In its decision, the Navy considered applicable executive orders, including an analysis of the environmental effects of its actions outside the United States or its territories under the provisions of Executive Order (EO) 12114, *Environmental Effects Abroad of Major Federal Actions,* and the requirements of EO 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.*

The proposed action will be accomplished as set out in Alternative 2, described in the Final Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/

OEIS) as the preferred alternative. Implementation of the preferred alternative could begin immediately. Because of the Navy's Title 10 requirements to organize, train, equip, and maintain combat-ready forces, ongoing training and RDT&E activities within the SOCAL Range Complex will continue at current levels in the event that the preferred alternative is not implemented.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) has been distributed to all those individuals who requested a copy of the Final EIS/OEIS and agencies and organizations that received a copy of the Final EIS/OEIS. The full text of the Navy's ROD is available for public viewing on the project Web site at *http://www.socalrangecomplexeis.com,* along with copies of the Final EIS/OEIS and supporting documents. Single copies of the ROD will be made available upon request by contacting Mr. Kent Randall, Naval Facilities Engineering Command Southwest, Code OPME, 2730 McKean Street, Building 291, San Diego, CA 92136–5198, Telephone: 619–556–2168.

Dated: January 27, 2009.

A. M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–2054 Filed 1–29–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The Department of Energy is authorized to enter into voluntary agreements with U.S. industry under section 106 of the Energy Policy Act of 2005 (EPACT). The proposed data collection will be used to evaluate the success of the voluntary agreements and to report results to Congress. EPACT requires DOE to report to Congress on the effectiveness of the voluntary commitments to reduce industrial energy intensity. The reports to Congress should include an evaluation of the success of the voluntary agreements to reduce participant energy intensity, and independent verification of a sample of energy savings estimates provided by participants. EPACT directs the reports to be submitted in 2012 and 2017.

In order to reduce the level of respondent burden required by participants, DOE has designed a data collection instrument which relies primarily upon pre-existing utility and energy-use data. In addition to information on company contacts and identification of participating plants, DOE is asking for a breakout of energy use by fuel type (in million metric British Thermal Units) aggregated across all of the plants that are voluntarily participating. DOE is asking for the annual change in the participants' aggregate energy intensity in units of percentage. Energy intensity may be calculated with existing organizational methods, or DOE's baselining tool which will be offered as a calculator. The calculator is not considered to be a data collection instrument. Finally, participants are asked to describe energy savings projects in simple, narrative form allowing respondents to provide summary information rather than detailed responses. DOE intends to calculate energy savings using the energy-use data from the baseline and current year, along with the baseline adjustment factor.

As a result of comments received during the 60 Day **Federal Register** Notice, DOE has increased the estimate of burden hours on respondent companies from 3 hours per plant to 10 hours per plant. This reflects the estimate received from the public, as well as the burden estimate used by the Manufacturing Energy Consumption Survey (MECS). While MECS collects similar information, it does not require manufacturers to provide an energy intensity number which is required for EPACT 2005.

DATES: Comments regarding this collection must be received on or before March 2, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to:

Desk Officer for the Department of Energy, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to Michaela Martin, Oak Ridge National Laboratory , PO Box 2008, MS–6070, Oak Ridge, TN 37831–6070, or by fax at 865–241–4152 or by e-mail at *martinma@ornl.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michaela Martin, Oak Ridge National Laboratory, PO Box 2008, MS–6070, Oak Ridge, TN 37831–6070, or by fax at 865–241–4152 or by e-mail at *martinma@ornl.gov*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. {''New''}; (2) Information Collection Request Title: Save Energy Now Voluntary Pledge Report; (3) Type of Request: New; (4) Purpose: The Department of Energy is authorized to enter into voluntary agreements with U.S. industry under section 106 of the Energy Policy Act of 2005. Data will be collected from industry pledge participants, annually, on progress made towards the reduction of energy intensity goals established by the voluntary agreements. The data collected will be used to evaluate the success of the voluntary agreements and to report results to Congress; (5) Type of Respondents: Public; (6) Estimated Number of Respondents: 20 companies; (7) Estimated Number of Burden Hours: 20 respondent companies with approximately 14 plants each averaging 10 burden hours per plant for an estimated total of 2,800 burden hours; (8) Estimated Cost Burden: none.

Statutory Authority: 42 U.S.C. 15811.

Issued in Washington, DC, on January 26th, 2009.

Rita L. Wells,

Acting Deputy Assistant Secretary for Business Administration, Energy Efficiency and Renewable Energy.

[FR Doc. E9–2028 Filed 1–29–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8590–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed

to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080494, ERP No. D–AFS–K65349–AZ, Safford Recreation Residences Project, Proposes to Issue 88 New Special-Use-Permits for Occupancy and Use of Recreation Residence, Safford Ranger District, Coronado National Forest, Graham County, AZ.

Summary: EPA does not object to the proposed project. Rating LO.

Final EISs

EIS No. 20080416, ERP No. F–BLM–L65541–OR, Western Oregon Bureau of Land Management Districts of Salem, Eugene, Roseburg, Coos Bay, and Medford Districts, and the Klamath Falls Resource Area of the Lakeview District, Revision of the Resource Management Plans, Implementation, OR.

Summary: While EPA supports changes made that addressed our comments, we continue to have environmental concerns about the potential impacts from reduced levels of protection of watersheds that provide drinking water and conservation habitat for salmon. EPA also recommends adoption of an effectiveness monitoring plan to help guide adaptive management.

EIS No. 20080437, ERP No. F–NPS–L65547–WA, San Juan Island National Historical Park, General Management Plan, Implementation, WA.

Summary: EPA supports the long-term strategy to protect coastal waters; however, we continue to have environmental concerns about the ability of the plan to protect surface water resources.

EIS No. 20080499, ERP No. F–NPS–D65038–MD, White-Tailed Deer Management Plan, Preferred Alternative is Alternative C, Implementation, Catocin Mountain Park, Frederick and Washington Counties, MD.

Summary: EPA does not object to the proposed project.

EIS No. 20090009, ERP No. F–AFS–L65555–WA, Republic Ranger Station Excess Residence Sale Project, Proposes to Sell a 0.72 Acre Parcel of Land with a Residential Building, Republic Ranger District, Colville National Forest, Ferry County, WA.

Summary: No formal comments were sent to the preparing agency.

EIS No. 20080443, ERP No. FS–BLM–J02039–MT, Montana Statewide Oil and Gas, Development Alternative for Coal Bed Natural Gas Production and Amendment of the Powder River and Billings Resource Management Plans, Additional InformationThree New Alternatives, Implementation, U.S. Army COE Section 404 Permit, NPDES Permit, Several Cos, MT.

Summary: The Final SEIS addressed many of EPA's concerns regarding air quality and water quality. However, we continue to have environmental concerns about potential impacts from water discharges and water quality, and recommend increased opportunities for stakeholder involvement in air quality mitigation and monitoring.

Dated: January 27, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–2042 Filed 1–29–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8589–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 01/19/2009 Through 01/23/2009

Pursuant to 40 CFR 1506.9.

EIS No. 20090016, Final EIS, FAA, MA, New Bedford Regional Airport Improvements Project, To Enhance Aviation Capacity, Air Traffic, Jet Traffic, Air Cargo and General Aviation Traffic, Southeastern Massachusetts Region, City of New Bedford, Bristol County, MA, *Wait Period Ends:* 03/02/2009, *Contact:* Michelle Ricci 781–238–7631.

EIS No. 20090017, Draft EIS, USN, GU, Mariana Islands Range Complex (MIRC), To Address Ongoing and Proposed Military Training Activities, Mariana Islands, GU, *Comment Period Ends:* 03/16/2009, *Contact:* Nora Macariola-See 808–472–1402.

EIS No. 20090018, Draft EIS, AFS, ID, Lakeview-Reeder Fuels Reduction Project, Proposed Fuels Reduction and Road Treatment Activities, Idaho Panhandle National Forests, Priest Lake Ranger District, Bonner County, ID, *Comment Period Ends:* 03/16/2009, *Contact:* David Cobb 208–443–2512.

EIS No. 20090019, Final EIS, FHW, 00, Interstate 74 Quad Cities Corridor Study, Improvements to the I–74 between 23rd Avenue in Moline, IL and 53rd Street in Davenport, IA, NPDES, Rivers and Harbors Act Section 9 and US Army COE Section 404 Permits, Scott County, IA and Rock Island County, IL, *Wait Period Ends:* 03/16/2009, *Contact:* Philip Barnes 515–233–7300.

EIS No. 20090020, Final EIS, AFS, WV, Lower Williams Project Area (LWPA), Alternative 6 is the Preferred Alternative, Proposed to Perform Vegetation Management and Wildlife Habitat Improvements, Implementation, Gauley Ranger District, Monongahela National Forest, Webster County, WV, *Wait Period Ends:* 03/02/2009, *Contact:* David Ede 304–636–1800 Ext. 233.

EIS No. 20090021, Draft EIS, AFS, CA, Inyo National Forest Motorized Travel Management Project, Implementation, Inyo, Mineral, Mono and Esmeralda Counties, CA, *Comment Period Ends:* 03/30/2009, *Contact:* Susan Joyce 760–873–2516.

EIS No. 20090022, Final EIS, AFS, WY, Off-Highway Vehicle (OHV) Route Designation Project, Proposing to Improve Management of Public Summer Motorized Use (May 1–November 30) by Designating Roads and Motorized Trails, Bridger-Teton National Forest, Buffalo, Jackson and Big Piney Ranger Districts, Teton, Lincoln and Sublette Counties, WY, Wait *Period Ends:* 03/02/2009, *Contact:* Linda Merigliano 307–739–5400.

EIS No. 20090023, Draft EIS, AFS, CA, Sequoia National Forest Motorized Travel Management Project, Prohibit Cross-Country Travel for Managing Motorized Travel, Kern River, Western Divide Ranger Districts, Sequoia National Forest, Tulare County, CA , *Comment Period Ends:* 03/31/2009, *Contact:* Barbara Johnston 559–784–1500 Ext. 1220.

EIS No. 20090024, Draft EIS, FHW, MO, Interstate 70 Corridor Improvements, Kansas City to St. Louis, Updated Information, Evaluates if a Truck-Only Lane Strategy is Viable, Kansas City to St. Louis, MO, *Comment Period Ends:* 03/16/2009, *Contact:* Peggy Casey 573–636–7104.

EIS No. 20090025, Draft EIS, IBR, CA, Grassland Bypass Project 2010–2019 Project, Proposed new Use Agreement, San Joaquin River, CA, *Comment Period Ends:* 03/30/2009, *Contact:* Judi Tapia 559–487–5138.

EIS No. 20090026, Draft EIS, FTA, CO, East Corridor Project, Proposes Commuter Rail Transit from downtown Denver to International Airport (DIA), Denver, Adams,

Arapahoe, Jefferson and Douglas Counties, CO, *Comment Period Ends:* 03/16/2009, *Contact:* Anthony Joseph Ossi, Jr. 202–366–1613.

Amended Notices

EIS No. 20090001, Draft EIS, FHW, IA, Southeast (SE) Connector in Des Moines, Iowa, To Provide a Safe and Efficient Link between the MLK Jr. Parkway at SE 14th Street to the U.S. 65 Bypass, Funding, U.S. Army COE Section 404 and NPDES Permits, Polk County, IA, *Comment Period Ends:* 03/02/2009, *Contact:* Philip Barnes 515–233–7300. Revision to FR Notice Published 1/16/2009: Correction to Status from Final to Draft.

EIS No. 20090010, Draft EIS, USN, WA—VOIDED—Swimmer Interdiction Security System (SISS) Project, Construction and Operation, Naval Bas Kitsap—Bangor, Silverdale, Kitsap County, WA, *Comment Period Ends:* 03/09/2009, *Contact:* Shannon Kasa 619–553–3889. This DEIS was inadvertently refilled and published in 01/23/2009 FR, the Correct DEIS # 20080531 was published on 12/29/2008.

EIS No. 20090012, Final EIS, NOA, 00, Proposed Acceptable Biological Catch (ABC) and Optimum Yield (OY) Specifications and Management Measures for the 2009–2010 Pacific Coast Groundfish Fishery Management Plan, Implementation, WA, OR and CA, *Wait Period Ends:* 02/23/2009, *Contact:* Barry Thom 503–231–6266. Revision to FR Notice Published 01/23/2009: Correction to Contact Person Name and Telephone.

EIS No. 20090014, Final EIS, NOA, OR, Bull Run Water Supply Habitat Conservation Plan, Application for and Incidental Take Permit to cover the Continued Operation and Maintenance, Sandy River Basin, City of Portland, OR, *Wait Period Ends:* 02/23/2009, *Contact:* Barry Thom, 503–231–6266 503–231–6266. Revision to FR Notice Published 01/23/2009: Correction to Contact Person Name and Telephone.

Dated: 01/27/2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–2041 Filed 1–29–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8769–8]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Good Neighbor Environmental Board (Board). The Board meets three times each calendar year, twice at different locations along the U.S. border with Mexico, and once in Washington, DC. It was created in 1992 by the Enterprise for the Americas Initiative Act, Public Law 102–532, 7 U.S.C. Section 5404. Implementing authority was delegated to the Administrator of EPA under Executive Order 12916. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the states of Arizona, California, New Mexico and Texas; and tribal and private organizations with expertise on environmental and infrastructure issues along the U.S./Mexico Border.

The purpose of the meeting is to hear from representatives from various groups on possible themes for the Board's next report. The meeting will include a planning session, a business meeting and a public comment session. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold an open meeting on Tuesday, March 10, from 10 a.m. (registration at 9:30 a.m.) to 5:30 p.m. The following day, March 11, the Board will hold a business meeting from 8:30 a.m. until 3 p.m.

ADDRESSES: The meeting will be held at Potomac Yards Conference Center, 2777 Crystal Drive, Arlington, VA 22202. Telephone: 703–308–0092. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, *joyce.mark@epa.gov,* 202–564–3120, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at 202–564–2130 or by e-mail at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: January 15, 2009.

Mark Joyce,

Designated Federal Officer.

[FR Doc. E9–2039 Filed 1–29–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0030; FRL–8769–9]

Human Studies Review Board (HSRB); Notice of a Public Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical review of human subjects research. The HSRB will hold a Public teleconference to discuss two completed field studies by Carroll-Loye Biological Research of mosquito repellent efficacy, and spatial insect repellent technology.

DATES: The teleconference will be held on February 17, 2009, from 11:30 to approximately 4 p.m. (Eastern Time).

Location: The meeting will take place via telephone only.

Meeting Access: For information on access or services for individuals with disabilities, please contact Lu-Ann Kleibacker prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**, so that appropriate arrangements can be made.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional

information concerning submission of relevant written or oral comments is provided in section D. of this notice.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the telephone conference, or who wish further information may contact Lu-Ann Kleibacker, EPA, Office of the Science Advisor (8105), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail at (202) 564–7189 or via e-mail at *kleibacker.lu-ann@epa.gov.* General information concerning the EPA HSRB is on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2009–0030, by one of the following methods:

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

E-mail: ORD.Docket@epa.gov.

Mail: ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center (EPA/DC), Public Reading Room, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–ORD–2009–0030. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0030. 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.

A. Does This Action Apply to Me?

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

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

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

Docket: All documents in the docket are listed in the index under the docket number. Even though it will be listed by title in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Copyright material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room, Infoterra Room (Room Number 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 ORD Docket is (202) 566–1752.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you use that support your views.
4. Provide specific examples to illustrate your concerns and suggest alternatives.
5. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

D. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this section. For information on access to the teleconference, please contact Lu-Ann Kleibacker prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**.

1. Oral Comments

Requests to present oral comments will be accepted up to February 9, 2009. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT** in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB DFO to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are limited to 5 minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is

available, there may be flexibility in time for public comments.

2. Written Comments

Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, EST, February 9, 2009. To ensure proper receipt of all written material by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2009–0030 in the subject line on the first page of your submission. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

1. Human Studies Review Board

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App.2 section 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: a. Research proposals and protocols; b. reports of completed research with human subjects; and c. how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor.

The EPA will present for HSRB review scientific and ethical issues surrounding the reports from a completed field study of mosquito repellent efficacy (SPC–001) and a completed laboratory study of tick repellent efficacy (SPC–002) conducted by Carroll-Loye Biological Research using multiple skin-applied repellent products containing picaridin. In addition, the HSRB will consider and discuss general information about ''spatial'' or ''area'' insect repellent products and their testing, in preparation for expected future reviews of proposals for field efficacy testing of spatial repellents. Insect repellent testing reviewed by the Board in past meetings has concerned only skin-applied repellents, which differ in important ways from spatial repellents. Finally, the HSRB may also discuss planning for future HSRB meetings.

2. Meeting Minutes and Reports

Minutes of the meeting, summarizing the matters discussed and recommendations made, if any, by the advisory committee regarding such matters will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov.* In addition, information concerning a Board meeting report, if applicable, can be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: January 26, 2009.

Kevin Teichman,

EPA Acting Science Advisor.

[FR Doc. E9–2037 Filed 1–29–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Public Hearing

Correction

In Notice document E9–1413 appearing on page 4436 in the issue of January 26, 2009, make the following correction:

In the second column, under the paragraph heading ''Board Action'' in the 17th line, ''February'' should read ''February 13th''.

[FR Doc. Z9–1413 Filed 1–29–09; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, January 27, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a personnel matter and matters relating to the Corporation's resolution and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director John M. Reich (Director, Office of Thrift Supervision), and concurred in by Director Thomas J. Curry (Appointive), Director John C. Dugan (Director, Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: January 27, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–2058 Filed 1–29–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, January 27, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in open session to consider the following matters:

Summary Agenda

Disposition of minutes of previous Board of Directors' meetings.

Discussion Agenda

Memorandum and resolution re: Proposed Rule for Interest Rate Restrictions for Institutions that are Less than Well-Capitalized.

Memorandum and resolution re: Final Rule on Processing Deposit Accounts in the Event of an Insured Depository Institution Failure.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director John C. Dugan (Director, Comptroller of the Currency), and concurred in by Director Thomas J. Curry (Appointive), Director John M.

Reich (Director, Office of Thrift Supervision), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on January 22, 2009, was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: January 27, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–2059 Filed 1–29–09; 8:45 am]

BILLING CODE 6714–01–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 February 26, 2009.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Allied Irish Banks, p.l.c., Dublin, Ireland, M&T Bank Corporation, and First Empire State Holding Company, all of Buffalo, New York, to acquire Provident Bankshares Corporation, Baltimore, Maryland, and merge Provident Bankshares Corporation with and into First Empire State Holding Company, and thereby indirectly acquire Provident Bank of Maryland, Baltimore, Maryland.

In connection with this application, First Empire State Holding Company has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, January 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–2015 Filed 1–29–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E9-1697) published on pages 4746 and 4747 of the issue for Tuesday, January 27, 2009.

Under the Federal Reserve Bank of Atlanta heading, the entry for David Weir Wood, II, Laura Halsey Wood, John Halsey Wood, David Weir Wood, II, Sidney Wood Clap, Katherine Wood Hamilton, all of Birmingham, Alabama, and Susan Soule Wood, Pensacola, Florida, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. David Weir Wood, II, Laura Halsey Wood, John Halsey Wood, David Weir Wood, II, Sidney Wood Clap, Katherine Wood Hamilton, all of Birmingham, Alabama, and Susan Wood Soule, Pensacola, Florida; to acquire additional shares of Capital South Bancorp, and its subsidiary CapitalSouth Bank, both of Birmingham, Alabama.

Comments on this application must be received by February 9, 2009.

Board of Governors of the Federal Reserve System, January 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–2014 Filed 1–29–09 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 081 0214]

Dow Chemical Company; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 23, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Dow Chemical, File No. 081 0214,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-DowChemical*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Michael A. Franchak, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-3406.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 23, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/2009/01/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Dow Chemical Company (''Dow'' or ''Respondent'') to remedy the anticompetitive effects stemming from Dow's proposed acquisition of Rohm & Haas Company (''Rohm & Haas''). Under the terms of the Consent Agreement, Dow is required to divest to a Commission-approved buyer significant portions of its acrylic monomer, acrylic latex polymer, and hollow sphere particle businesses and to license certain intellectual property related to the production of the products in these businesses. Dow is also required to institute procedures to ensure that the other businesses it acquired from Rohm & Haas do not have access directly or indirectly to competitively sensitive non-public information regarding the divested assets.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw from the proposed Consent Agreement, modify it, or make final the Consent Agreement's proposed Order.

On July 10, 2008, Dow announced a definitive agreement to purchase all of the outstanding shares of Rohm and Haas in a transaction valued at $18.8 billion, including $3.5 billion in debt assumption. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the North American markets for the research, development, manufacture and sale of glacial acrylic acid, butyl acrylate, ethyl acrylate, acrylic latex polymers for traffic paint, and hollow sphere particles. The Consent Agreement will remedy the alleged violation by divesting significant acrylic monomer and acrylic polymer research, development, production and manufacturing assets and related intellectual property to a third party thereby replacing the lost competition that would result from the acquisition in these markets.

II. The Proposed Complaint

According to the Commission's proposed Complaint, the relevant lines of commerce in which to analyze the effects of the proposed acquisition are the markets for the research, development, manufacture, and sale of certain acrylic monomers, including glacial acrylic acid, butyl acrylate and ethyl acrylate, as well as acrylic latex polymer for traffic paint and hollow sphere particles.

All of the acrylic monomer relevant products are made from crude acrylic acid. Glacial acrylic acid is purified crude acrylic acid and is used to make super absorbent polymers for personal care and hygiene products. Butyl acrylate and ethyl acrylate are acrylate esters formed from reacting crude acrylic acid with butanol and ethanol, respectively. These acrylate esters are then used to produce acrylic latex polymers used in paints, architectural coatings, and pressure sensitive adhesives.

Acrylic latex polymer for traffic paint and hollow sphere particles are unique types of polymers. Acrylic latex polymer for traffic paint is a quick drying polymer used to mark traffic lines on highways. Hollow sphere particles are a type of specialty polymer that is used in the manufacture of coated paper to provide gloss, brightness, and opacity.

The Complaint alleges that the relevant geographic market in which to analyze the anticompetitive effects of the proposed acquisition for all of the relevant markets is no larger than North America. Most monomers are difficult to ship because of their volatility. While there are some minor imports of acrylic monomers, they are not a meaningful constraint on the prices of these products in North America. Acrylic polymers, such as those used for traffic paint and hollow sphere particles, are also difficult and expensive to ship long distances. Shipping these polymers, which must be immersed in water for transport, is cost-prohibitive because of the substantial added water weight relative to the value of the polymer itself.

The Complaint further alleges that all of the relevant markets are highly concentrated. For the acrylic monomer relevant markets, the proposed transaction would reduce the number of significant players in those markets from four to three with the combined company having significant market shares in each of the markets. The combined entity would have a market share exceeding 40% in glacial acrylic acid, a market share approaching 90% in the market for butyl acrylate, and a market share approaching 80% in ethyl acrylate. The markets for acrylic polymer for traffic paint and hollow sphere particles are even more highly concentrated with Dow and Rohm & Haas as the only two suppliers. As a result, the proposed acquisition would result in a merger to monopoly in those markets.

Finally, the Complaint alleges that the proposed acquisition would reduce competition in the relevant markets by

eliminating direct and substantial competition between Dow and Rohm & Haas, by increasing Dow's ability to exercise market power unilaterally in the relevant markets, and/or by increasing the likelihood of coordinated interaction in the markets for glacial acrylic acid, butyl acrylate, and ethyl acrylate. The Complaint further alleges that potential new entry or fringe expansion would not prevent the anticompetitive effects described in the Complaint.

III. Terms of the Proposed Order

Under the proposed Consent Agreement, Dow will divest to a single Commission-approved Acquirer a significant part of its acrylic monomer and polymer research and development and production assets including: its acrylic monomer production facility in Clear Lake, Texas; its acrylic polymer production assets located in St. Charles, Louisiana; its acrylic polymer production facility located in Alsip, Illinois; its acrylic polymer production facility located in Torrance, California; its acrylic monomer research and development group located in South Charleston, West Virginia; its acrylic latex polymer research and development group located in Cary, North Carolina, and other assets related to such businesses. The divestiture would also include the technology that is primarily related to these businesses, and further provides that Dow license to the Acquirer any intellectual property not primarily related to the divested business that Dow nonetheless uses in those businesses, and requires Dow to divest the business contracts of the divested businesses, and obtain the consents that are necessary to assign those contracts to the Acquirer. The divestiture to a single acquirer of both acrylic monomer and acrylic polymer research, development, manufacture and production assets best replicates the pre-acquisition market structure in which each of the significant acrylic monomer firms was forward-integrated into the supply of acrylic polymers.

In order to ensure the transition of the divested assets and the viability of the Acquirer, the Consent Agreement requires Dow to provide certain services. First, Dow is required to continue to provide certain input products to the Acquirer that Dow provided previously to the divested assets. Second, the Consent Agreement requires Dow to provide transition services for a short period of time to accomplish the transition of the divested assets to the Acquirer. Finally, the Consent Agreement requires that Dow continue to provide site services to the Acquirer in connection with the acrylic polymer production assets located in St. Charles, Louisiana, where the Acquirer will operate a business unit that, although largely separate, is located on the grounds of a larger Dow facility.

The Consent Agreement remedies the competitive concerns in the markets for hollow sphere particles and acrylic latex polymer for traffic paint by requiring Dow to divest the intellectual property that is primarily related to these products and to license certain other intellectual property used for these products. In addition, Dow is required to supply hollow sphere particles and acrylic latex polymer for traffic paint to the Acquirer at its manufacturing cost, until such time as the Acquirer is able to develop its own manufacturing.

The Consent Agreement also requires Dow to institute procedures to ensure that it does not have access directly, or indirectly, to competitively sensitive non-public information obtained from the Divested Businesses and Facilities or to use any such competitively sensitive non-public information it already has in an anticompetitive manner.

The proposed Order gives the Commission the power to appoint an interim monitor to assure that Dow expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Order. If Dow fails to sell the divested assets within the later of (1) 240 days after the Consent Agreement is accepted by the Commission for Public Comment and (2) 240 days after the Acquisition closes, the Order allows for the appointment of a Divestiture Trustee to divest the assets that are the subject of the proposed Order. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires Dow to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E9–2081 Filed 1–29–09: 8:45 am]

[BILLING CODE 6750–01–S]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–09–09AM]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by e-mail to *omb@cdc.gov*.

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 a practical utility; (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 clarify 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 information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Prevalence Survey of Healthcare Acquired Infections (HAIs) in U.S. Acute Care Hospitals—New—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to conduct a survey to obtain national estimates of HAIs prevalence in the United States. Preventing HAIs is a CDC priority. An essential step in reducing the occurrence of HAIs is to accurately estimate the burden of these infections in U.S. hospitals and to describe the types of HAIs and their causative organisms. The scope and magnitude of HAIs in the U.S. were last directly estimated in the 1970s and 1980s by CDC's Study on the Efficacy of Nosocomial Infection Control (SENIC), in which comprehensive data were

collected from a sample of 338 hospitals; 5% of hospitalized patients acquired an infection not present at the time of admission. Because of the substantial resources necessary to conduct hospital-wide surveillance in an ongoing manner, CDC's current HAI surveillance system, the National Healthcare Safety Network (NHSN), focuses instead on device-associated and procedure-associated infections in a variety of patient locations, and does not receive data on all types of HAIs to make hospital-wide burden estimates. The purpose of this data collection is to assess the magnitude and types of HAIs occurring in all patient populations within acute care hospitals in order to inform decisions by local and national policy makers and hospital infection control personnel regarding appropriate targets and strategies for HAI prevention. Such assessments can be obtained in periodic national prevalence studies, such as those that have been conducted in several European countries.

The proposed survey will be conducted in a representative sample of 500 U.S. acute care hospitals, and will require infection control personnel in each participating hospital to collect surveillance data on CDC-defined HAIs on a single day for a sample of eligible patients in the participating hospitals. CDC will use the data provided to estimate the prevalence of HAIs across this representative sample of U.S. hospitals as well as the distribution of infection types and causative organisms. CDC will also use this data to promote its goal of preventing HAIs.

The proposed project supports CDC's Strategic Goal of ''Healthy Healthcare Settings,'' specifically the objective to ''Promote compliance with evidence-based guidelines for preventing, identifying, and managing disease in healthcare settings.'' There are no costs to respondents, other than their time to complete the survey.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Infection Control Practitioners	500	74	15/60	9,250
Total				9,250

Dated: January 22, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–2002 Filed 1–29–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-09–0544]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

NIOSH Customer Satisfaction Survey—Reinstatement—National Institute for Occupational Safety and Health, (NIOSH) Centers for Disease Control and Prevention, (CDC).

Background and brief description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The Occupational Safety and Health Act, Public Law 91–596 (section 20[a][1]) authorizes the National Institute for Occupational Safety and Health (NIOSH) to conduct research to advance the health and safety of workers. NIOSH conducted a baseline survey in 2003 to assess customer satisfaction with NIOSH communication products, services, and methods of dissemination [OMB #0920–0544 expired 03/31/2003]. The baseline survey established an initial benchmark for gauging the effectiveness of NIOSH's communication products, outreach services, and identified areas for improvement.

NIOSH is conducting a follow-up Customer Satisfaction Survey of occupational safety and health professionals. A mail survey is planned with an option that will allow respondents to complete the survey electronically. The current survey is a 5-year follow-up designed to enable NIOSH to determine the current level of customer satisfaction and identify changes that have occurred in the intervening years. The purpose of this survey is to evaluate the effectiveness of NIOSH's communication and dissemination program as a whole in serving the broad occupational safety and health professional community by addressing five questions:

(1) To what extent are NIOSH communication products viewed as credible, useful sources of information on occupational safety and health issues?

(2) To what extent has NIOSH been successful in distributing its communication products to its primary and traditional audience?

(3) To what extent, and in what ways, have NIOSH communication products influenced workplace safety and health program policies and practices, or resolved other related issues?

(4) What improvements could be made in the nature of NIOSH communication products and/or their manner of delivery that could enhance their use and benefits?

(5) What is the reach and perceived importance of NIOSH outreach initiatives?

The survey will be directed to the community of occupational safety and health professionals, as this audience represents the primary and traditional customer base for NIOSH information materials. For this purpose four major associations identified with occupational safety and health matters have indicated their willingness to partner with NIOSH on this follow-up survey, as they did on the baseline. These are the American Industrial Hygiene Association (AIHA), the American College of Occupational and Environmental Medicine (ACOEM), the American Association of Occupational

Health Nurses (AAOHN), and the American Society of Safety Engineers (ASSE). There is no cost to respondents.

The estimated annualized burden hours are 205.

ESTIMATED ANNUALIZED BURDEN HOURS:

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
NIOSH Customer Satisfaction Survey	Respondents familiar with NIOSH	570	1	20/60
	Respondents not familiar with NIOSH	150	1	6/60

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–2005 Filed 1–29–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-09–0234]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at 404–639–5960 or send comments to CDC/ATSDR Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

National Ambulatory Medical Care Survey (NAMCS) (OMB No. 0920–0234)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''utilization of health care'' in the United States. NAMCS was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. The purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. NCHS is seeking OMB approval to extend this survey for three years.

Ambulatory services are rendered in a wide variety of settings, including physician offices and hospital outpatient and emergency departments. The NAMCS target universe consists of all office visits made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care.

In 2006, physicians and mid-level providers (i.e., nurse practitioners, physician assistants, and nurse midwives) practicing in community health centers (CHCs) were added to the NAMCS sample, and these data will continue to be collected. To complement NAMCS data, NCHS initiated the National Hospital Ambulatory Medical Care Survey (NHAMCS, OMB No. 0920–0278) in 1992 to provide data concerning patient visits to hospital outpatient and emergency departments. NAMCS and NHAMCS are the principal sources of data on ambulatory care provided in the United States.

NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics, reason(s) for visit, provider diagnoses, diagnostic services, medications, and visit disposition. In addition, information on cervical cancer screening practices in physician offices will continue to be collected through the Cervical Cancer Screening Supplement (CCSS), which was added in 2006. It will allow CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) to evaluate cervical cancer screening methods and the use of Human Papillomavirus DNA tests.

A supplemental mail survey on the adoption and use of electronic medical records (EMRs) in physician offices was added to NAMCS in 2008, and will continue. These data were requested by the Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services, to measure progress toward goals for EMR adoption. The mail survey will collect information on characteristics of physician practices and the capabilities of EMRs used in those practices.

In 2009, NAMCS will include an additional sample of 70 physicians to pretest additional questionnaire items on laboratory values. These new items were requested by the Division of Heart Disease and Stroke Prevention within NCCDPHP to better understand the extent to which ambulatory health care providers identify and control abnormal values before and after cardiovascular disease.

Users of NAMCS data include, but are not limited to, Congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners.

There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
Induction Interview—Physicians/CHC Providers	3,480	1	28/60	1,624
Patient Record Form	1,388	30	6/60	4,164
CCSS	464	1	15/60	116
EMR Mail Survey	1,143	1	16/60	305
CHC Induction Interview—Facility	104	1	18/60	31
Total				6,240

Dated: January 23, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–2006 Filed 1–29–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Immunology Integrated Review Group; Vaccines Against Microbial Diseases Study Section.

Date: February 5, 2009.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Jian Wang, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetics of Health and Disease Study Section.

Date: February 5–6, 2009.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Child Psychopathology.

Date: February 9, 2009.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–2309, *pluded@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Metabolic Endocrinology.

Date: February 11–12, 2009.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Reed A. Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Gene Therapy Member Conflict.

Date: February 11, 2009.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hematopoietic Stem Cell Regulation.

Date: February 12, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1845 Filed 1–29–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

Date: February 26–27, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Doubletree Hotel, 1515 Rhode Island Avenue, Washington, DC.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1950 Filed 1–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences National Cancer Institute.

Date: March 2–3, 2009.

Time: March 2, 2009, 6 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Double Tree Hotel, Grand Ballroom, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Time: March 3, 2009, 9 a.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2205, Bethesda, MD 20892, 301–496–7628, *ff6p@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus.

Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsc/bs/bs.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1836 Filed 1–29–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

Date: March 2, 2009.

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

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Time: 6 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Double Tree Hotel, Grand Ballroom, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brian E. Wojcik, PhD., Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, 6116 Executive Boulevard, Room 2201, Bethesda, MD 20892, (301) 496–7628, *wojcikb@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsc.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos, 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and

Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1837 Filed 1–29–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Basic and Preclinical Research on CAM.

Date: March 2–3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Peter Kozel, PhD, Scientific Review Officer, NCCAM, 6707 Democracy Boulevard Suite 401, Bethesda, MD 20892–5475, 301–496–8004, *kozelp@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Immune RFA.

Date: March 19–20, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20814.

Contact Person: Martina Schmidt, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov.*

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1839 Filed 1–29–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended.

The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Diversity-promoting Institution Drug Abuse, Research Program (DIDARP).

Date: March 3, 2009.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–402–2105, *rogersn2@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, B/START Review.

Date: March 13, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, 220, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1838 Filed 1–29–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism, Special Emphasis Panel Review of AA–1 Application with Reviewer Conflict.

Date: March 2–3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle Washington, DC 20005.

Contact Person: Philippe Marmillot, PhD, 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: January 22 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1840 Filed 1–29–09; 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 AA–3 Member Conflict Review.

Date: March 9, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, 2085, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1841 Filed 1–29–09; 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, AA–3 Member Conflict Review.

Date: March 9, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, 2085, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Chief, Extramural Project Review Branch, National Institute On Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1842 Filed 1–29–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, January 27, 2009, 9 a.m. to January 27, 2009, 1 p.m., Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850 which was published in the **Federal Register** on December 12, 2008, Vol. 73, No. 240.

The location of the meeting was changed to Rockville Hilton Hotel, 1750 Rockville Pike, Rockville, MD 20852. The meeting is closed to the public.

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1844 Filed 1–29–09; 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, Underage Drinking: Building Health Care System Responses, RFA-AA–09–001.

Date: March 17, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, 5635 Fishers Lane 2121, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Officer, 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: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1860 Filed 1–29–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Drug Abuse, February 3, 2009, 2 p.m. to February 4, 2009, 1 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on January 21, 2009, 74; 12 FR E9–985.

The meeting scheduled for February 3, 2009 from 2 p.m. to 5 p.m. was changed from open to closed to the public.

The meeting is partially closed to the public.

Dated: January 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1968 Filed 1–29–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0184]

Privacy Act of 1974; United States Immigration and Customs Enforcement—011 Removable Alien Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of records notices, the Department of Homeland Security is giving notice that it proposes to update and reissue the following legacy record system, Justice/INS–012 Deportable Alien Control System (July 31, 2000), as a Department of Homeland Security/Immigration and Customs Enforcement system of records notice titled, DHS/ICE–011 Removable Alien Records System. Categories of individuals and categories of records have been reviewed, and the routine uses of this legacy system of records notice have been updated to better reflect the current status of these records. The exemptions for the legacy system of records notices will continue to be applicable until a notice of proposed rulemaking and the final rule for this SORN have been completed. This new system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before March 2, 2009. This new system will be effective March 2, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0184 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* John W. Kropf, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Lyn Rahilly (202–732–3300), United States Immigration and Customs Enforcement Privacy Officer, United States Immigration and Customs Enforcement. For privacy issues please contact: John W. Kropf (703–235–0780), Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) have relied on preexisting Privacy Act systems of records notices (SORN) for the collection and maintenance of records that concern information pertaining to aliens who are removable pursuant to the Immigration and Nationality Act.

As part of its efforts to streamline and consolidate its record systems, DHS is updating and reissuing a legacy Immigration and Naturalization Service system of records under the Privacy Act (5 U.S.C. 552a) that deals with aliens who are removable and have been removed from the United States. This record system will allow DHS/ICE to continue to collect and maintain records regarding individuals removed or deemed removable by DHS/ICE. The collection and maintenance of this information assists DHS/ICE in meeting its obligation to manage the status and/or disposition of removed and removable aliens.

In accordance with the Privacy Act of 1974 and as part of DHS's ongoing effort to review and update legacy system of records notices, DHS is giving notice that it proposes to update and reissue the following legacy record system, Justice/INS–012 Deportable Alien Control System (65 FR 46738 July 31, 2000), as a DHS/ICE system of records notice titled, DHS/ICE–011 Removable Alien Records System. Categories of individuals and categories of records have been reviewed, and the routine uses of this legacy system of records notice have been updated to better reflect the DHS/ICE removable alien records. The exemptions for the legacy system of records notices will continue to be applicable until the notice of proposed rulemaking and the final rule for this SORN have been completed. This new system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained

in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ICE Removable Alien Records System.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget (OMB) and to Congress.

SYSTEM OF RECORDS

DHS/ICE–011.

SYSTEM NAME:

DHS/ICE–011 Removable Alien Records System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the United States Immigration and Customs Enforcement Headquarters in Washington, DC and in field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include aliens removed and alleged to be removable by DHS/ICE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system may include:

- Alien's name;
- Alien file number;
- Date of birth;
- Country of birth;
- United States addresses;
- Foreign addresses;
- ICE case file number;
- Subject ID and Person ID;
- Fingerprint Identification (FINS) number;
- Bureau of Prisons/U.S. Marshals Service number;
- FBI number;
- Event ID;
- Immigration bond number;
- Charge;
- Amount of bond;
- Hearing date;
- Case assignment;
- Scheduling date;
- Sections of law under which excludability/removability is alleged;
- Data collected to support DHS/ICE's position on excludability/removability, including information on any violations of law and conviction information;
- Date, place, and type of last entry into the United States;
- Attorney/representative's contact information (Last Name; First Name; Middle Name; Suffix; Law Firm; Dates of representation; whether a G–28 has been filed)
- Family data;
- DHS/ICE agents assigned;
- Employer Information: (Employer Name; Employment Start Date and End Date; County; Address; Zip Code; Telephone number; Compensation Type; Salary/Wage;);
- Government decisions concerning an individual's request for immigration benefits and information about other immigration-related actions by the Government (*e.g.*, dismissals, entry of orders of removal, etc.); and
- Other case-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 8 U.S.C. 1103, 1227, 1228, 1229, 1229a, and 1231.

PURPOSE(S):

The purpose of this system is to assist DHS/ICE in the removal and detention of aliens in accordance with immigration and nationality laws. This system also serves as a docket and control system by providing management with information concerning the status and/or disposition of removable aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face

or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a court, magistrate, administrative tribunal, opposing counsel, parties, and witnesses, in the course of a civil or criminal proceeding before a court or adjudicative body when

(a) DHS or any component thereof; or

(b) any employee of DHS in his or her official capacity; or

(c) any employee of DHS in his or her individual capacity where the agency has agreed to represent the employee; or

(d) the United States, where DHS determines that litigation is likely to affect DHS or any of its components, is a party to litigation or has an interest in such litigation, and DHS determines that use of such records is relevant and necessary to the litigation, provided however that in each case, DHS determines that disclosure of the information to the recipient is a use of the information that is compatible with the purpose for which it was collected.

I. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.

J. To other Federal, State, local, or foreign government agencies, individuals, and organizations during the course of an investigation, proceeding, or activity within the purview of immigration and nationality laws to elicit information required by DHS/ICE to carry out its functions and statutory mandates.

K. To the appropriate foreign government agency charged with enforcing or implementing laws where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

L. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

M. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.

N. To an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

O. To foreign governments for the purpose of coordinating and conducting the removal of aliens from the United States to other nations.

P. To family members and attorneys or other agents acting on behalf of an alien to assist those individuals in determining whether (1) the alien has been arrested by DHS for immigration violations, and (2) the location of the alien if in DHS custody, provided however, that the requesting individuals are able to verify the alien's date of birth or Alien Registration Number (A-Number), or can otherwise present adequate verification of a familial or agency relationship with the alien.

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Records are retrieved by Name, A-file number, alien's Bureau of Prisons/U.S. Marshal number, case number, subject ID, person ID, FINS number, event ID, state ID, FBI number, and/or bond number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Cases that have been closed for a year are archived and stored in the database for 75 years, then deleted. Copies of forms used within this system of records are placed in the alien's file. Electronic copies of records (copies from electronic mail and word processing systems) which are produced and made part of the file are deleted within 180 days after the recordkeeping copy is produced.

SYSTEM MANAGER AND ADDRESS:

Director, Detention and Removal Operations, Immigration and Customs Enforcement Headquarters, 500 12th Street, SW., Washington, DC 20024.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, CBP will consider requests individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to United States Immigration and Customs Enforcement, Freedom of Information Act Office, 800 North Capitol Street, NW., Room 585, Washington, DC 20536.

When seeking records about yourself from this system of records or any other ICE system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Specify when you believe the records would have been created,

• If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the ICE may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Alien; alien's attorney/representative; DHS/ICE agent; other Federal, State, local and foreign agencies; and the courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Dated: January 27, 2009.

John W. Kropf,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–2029 Filed 1–29–09; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Extension of Bond for Temporary Importation

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0015.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Extension of Bond for Temporary Importation. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 31, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Extension of Bond for Temporary Importation.

OMB Number: 1651–0015.

Form Number: CBP Form 3173.

Abstract: Imported merchandise that is to remain in the Customs territory for one year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on CBP Form 3173.

Current Actions: This submission is being made to extend the expiration date. The burden hours have been adjusted to correct a calculation error.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,200.

Estimated Number of Annual Respondents per Respondent: 14.

Estimated Number of Total Annual Responses: 16,800.

Estimated Time per Response: 13 minutes.

Estimated Total Annual Burden Hours: 3,646.

Dated: January 7, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–2063 Filed 1–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Cargo Container and Road Vehicle Certification for Transport Under Customs Seal

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0124.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Cargo Container and Road Vehicle Certification for Transport under Customs Seal. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 31, 2009, to be assured of consideration.

ADDRESS: Direct all written comments to the U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Cargo Container and Road Vehicle Certification for Transport Under Customs Seal.

OMB Number: 1651–0124.

Form Number: None.

OMB Number: 1651–0124.

Form Number: None.

Abstract: The information collected is used as part of a voluntary program to receive internationally-recognized CBP certification that intermodel container/road vehicles meet the construction requirements of international Customs conventions. Such certification facilitates International trade by reducing intermediate international controls.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 120.

Estimated Number of Responses: 3,000.

Estimated Time per Response: 3.5 hours.

Estimated Total Annual Burden Hours: 10,500.

Dated: January 9, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–2075 Filed 1–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S CUSTOMS AND BORDER PROTECTION

Agency Information Collection Activities: Bonded Warehouse Proprietor's Submission

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0033.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bonded Warehouse Proprietor's Submission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 31, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1651–0033.

Form Number: CBP Form 300.

Abstract: CBP Form 300 is prepared by Bonded Warehouse Proprietor and submitted to CBP annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 1,800.

Estimated Time per Respondent: 24.3 hours.

Estimated Total Annual Burden Hours: 43,740.

Dated: January 9, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–2076 Filed 1–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration of Person Who Performed Repairs

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0048.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection

requirement concerning the Declaration of a Person Who Performed Repairs. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 31, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Declaration of Person Who Performed Repairs.

OMB Number: 1651–0048.

Form Number: None.

Abstract: The Declaration of Person Who Performed Repairs is used by CBP to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 10,236.

Estimated Number of Total Annual Responses: 20,472.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Dated: January 7, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–2078 Filed 1–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Customs Modernization Act Recordkeeping Requirements

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0076.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Customs Modernization Act Recordkeeping Requirements. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 31, 2009, to be assured of consideration.

ADDRESS: Direct all written comments to the U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Customs Modernization Act Recordkeeping Requirements.

OMB Number: 1651–0076.

Form Number: None.

Abstract: This recordkeeping requirement is required to allow CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 4,695.

Estimated Average Annual Time per Respondent: 1,037 hours.

Estimated Total Annual Burden Hours: 4,870,610.

Dated: January 7, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–2079 Filed 1–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–04]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 22, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9–1825 Filed 1–29–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2009–N0008; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by March 2, 2009.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Western Foundation of Vertebrate Zoology, Camarillo, CA, PRT–695190

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five-year period.

Applicant: Richard P. Shoemaker, Coplay, PA, PRT–199607

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert D. Taylor, Joshua, TX, PRT–197431

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Bradford S. Kline, McLean, VA, PRT–197427

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Terrance L. Hurlburt, The Woodlands, TX, PRT–201977

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Merle A. Sampson, Inver Grove Heights, MN, PRT–203086

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Francisco A. Vega, San Diego, CA, PRT–202779

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gregg A. Loudon, Millington, MI, PRT–202783

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Written data, comments,

or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: University of Michigan, Department of Environmental Health Sciences, Ann Arbor, MI, PRT–197043

The applicant requests a permit to import biological specimens collected from polar bears *(Ursus maritimus)* in range countries for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: University of Florida, College of Veterinary Medicine, Aquatic Animal Health Program, Gainesville, FL, PRT–067116

The applicant requests a renewal of the permit to collect biological specimens from West Indian manatees *(Trichechus manatus)* for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: January 9, 2009.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E9–2102 Filed 1–29–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2008–N0253; [70133–1265–0000–S3]

Innoko National Wildlife Refuge, McGrath, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the revised comprehensive conservation plan and finding of no significant impact for environmental assessment.

SUMMARY: We, the Fish and Wildlife Service (Service) announce the availability of our Revised Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) for the Innoko National Wildlife Refuge (Innoko Refuge). In this revised CCP, we describe how we will manage this Refuge for the next 15 years.

ADDRESSES: You may view or obtain copies of the revised CCP and FONSI by any of the following methods. You may request a paper copy, a summary, or a CD–ROM containing both.

Agency Web Site: Download a copy of the documents at *http://alaska.fws.gov/nwr/planning/innpol.htm.*

E-mail: *fw7_innoko_planning@fws.gov*. Please include ''Innoko Refuge Revised CCP'' in the subject line of the message.

Mail: Rob Campellone, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS 231, Anchorage, AK 99503–6199.

In-Person Viewing or Pickup: Call (907) 786–3357 to make an appointment during regular business hours at the USFWS Regional Office, 1011 E. Tudor Road, Anchorage, AK 99503 or call (907) 524–3251 to make an appointment during regular business hours at Innoko Refuge, 40 Tonzona, McGrath, AK 99627.

FOR FURTHER INFORMATION CONTACT: Rob Campellone, Planning Team Leader, (907) 786–3357 or *fw7_innoko_planning@fws.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for the Innoko Refuge. We started this process with a notice of intent in the **Federal Register** (72 FR 8197, Feb. 23, 2007) We announced the availability of the draft CCP and EA, and requested comments in a notice of availability in the **Federal Register** (73 FR 27842, May 14, 2008).

Established by the Alaska National Interest Lands Conservation Act (94 Stat. 2371) in 1980, Innoko Refuge covers some 3,850,000 acres and is one of the most important waterfowl areas in west central interior Alaska. Approximately half of the Refuge consists of wetlands set with innumerable lakes and ponds of varying size. The remainder is marked by hills, most of which are less than one thousand feet in elevation. Almost one-third of the Refuge is designated Wilderness. The route of the historic Iditarod Trail crosses the Refuge.

Refuge purposes include (1) conservation of fish and wildlife populations and habitats in their natural diversity including, but not limited to, waterfowl, peregrine falcons, other migratory birds, black bear, moose, furbearers, and other mammals and salmon; (2) fulfilling the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (3) providing, in a manner consistent with purposes (1) and (2) above, the opportunity for continued subsistence by local residents; and ensuring, to the maximum extent practicable and in a manner consistent with purpose (1) above, water quality and necessary water quantity within the Refuge.

We announce our decision and the availability of the FONSI for the revised CCP for Innoko Refuge in accordance with National Environmental Policy Act (NEPA) [40 CFR 1506.6(b)] requirements. We completed a thorough analysis of impacts on the human environment in the EA that accompanied the draft revised CCP.

The CCP will guide us in managing and administering the Innoko Refuge for the next 15 years. The revised CCP is Alternative B, the proposed action in the draft CCP, edited slightly in response to public comments.

Background

The Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2371; ANILCA) and the National Wildlife Refuge system Improvement Act of 1997 (16 U.S.C. 668dd–668ee) require us to develop a CCP for each Alaska refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan 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 our policies. We will review and update the CCP at least every 15 years in accordance with national policy and ANILCA. ANILCA requires us is to designate areas according to their respective resources and values and to specify programs and uses within the areas designated. To meet this requirement, the Alaska Region established management categories for refuges including Wilderness, Minimal, Moderate, Intensive, and Wild River management. For each management category we identified appropriate activities, public uses, commercial uses, and facilities. Only Wilderness and Minimal management categories are applied to Innoko Refuge.

Draft CCP Alternatives

Our draft CCP and EA addressed seven issues and evaluated two alternatives. The seven significant issues raised during scoping were: (1) Competition for moose harvesting; (2) management of air taxis to balance

demand for visitor access with user experience and resource protection; (3) threats to water quality from off-Refuge mining; (4) Refuge enhancement of its relationship with local communities; (5) monitoring and addressing the effects of climate change; (6) the State of Alaska's wood bison project; and (7) ensuring resource protection while providing for subsistence and other public uses.

Alternative A (the no-action alternative—a NEPA requirement) described what would happen with a continuation of current management activities and served as a baseline for comparison of other alternative. Under Alternative A, management of the Refuge would continue to follow the current course of action as described in the 1987 Innoko CCP and Record of Decision as modified by subsequent program-specific plans. Refuge lands would remain in their present management categories.

Under our selected alternative, Alternative B, Refuge lands would continue to be managed in their present management categories. New regional policies and guidelines for national wildlife refuges in Alaska would be incorporated. The vision, goals, and objectives proposed in the draft CCP would be adopted to guide Refuge management.

Comments on the Draft CCP

Public comments on the draft CCP and EA were solicited from May 14, 2008 through July 22, 2008. A public meeting was held in McGrath but no one attended it. Comments were received from the State of Alaska, three conservation organizations, one big-game guide outfitter, and two individuals.

One individual requested a ban on all hunting, trapping, logging, new roads and prescribed burning in the Refuge. The other individual recommended that the Refuge Headquarters be moved to Galena. Support for the State of Alaska's wood bison project and opposition to future subsistence hunting of wood bison was expressed. The outfitter-guide expressed concern about management of air taxis and management of hunting within the Refuge. Two conservation organizations requested the CCP include Wilderness and Wild and Scenic River recommendations. One organization provided comments on motorized and mechanized activities, climate change, and supported disclosure of information about State of Alaska right-of-way claims. One organization provided a number of specific comments on access and fisheries enhancement in wilderness. The State of Alaska provided technical and editorial comments on wood bison, fisheries management, goals and objectives, predator management, management policies and guidelines, and draft compatibility determinations.

No substantive revisions to Alternative B, the proposed action, were made as a result of the public comments on the Draft Revised Innoko CCP. A number of technical corrections were made in response to comments and many of the editorial suggestions provided by the State of Alaska were adopted.

Dated: October 10, 2008.

Thomas O. Melius,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

Editorial Note: This document was received in the Office of the Federal Register on Tuesday, January 27, 2009.

[FR Doc. E9–2088 Filed 1–29–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L14200000.BJ0000–LLNM915000–2009]

Notice of Filing of Plats of Survey; New Mexico and Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management (BLM), Santa Fe, New Mexico, 30 calendar days from the date of this publication

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico

The plat representing metes-and-bounds survey of certain lot lines in secs. 19, 20, and 21, Township 20 North, Range 7 East of the New Mexico Principal Meridian, New Mexico accepted November 26, 2008, for Group 1067 NM.

The plat representing the dependent resurvey of a portion of the east and the west boundary, subdivisional lines, certain tracts and subdivision of secs. 17 and 18, Township 19 North, Range 6 East, of the New Mexico Principal Meridian, New Mexico accepted November 26, 2008, for Group 1067 NM.

Indian Meridian, Oklahoma

The plat representing the dependent resurvey of a portion of the west boundary, subdivisional lines, subdivision sec. 19, survey of the Illinois River and metes-and-bounds survey of certain Indian Trust Lands in sec. 19, Township 17 North, Range 23 East of the Indian Meridian, Oklahoma, accepted January 8, 2009 for Group 143 OK.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the survey of the Washita River and a portion of the subdivision of sec. 10, Township 7 North, Range 9 West, of the Indian Meridian, Oklahoma, accepted September 30, 2008, for Group 144 OK.

The plat representing the dependent resurvey of a portion of the subdivisional lines, survey of the Washita River, the subdivision and metes-and-bounds survey in sec. 15, Township 7 North, Range 10 West, of the Indian Meridian, Oklahoma, accepted September 30, 2008, for Group 150 OK.

The plat representing the dependent resurvey of a portion of the First Guide Meridian West, subdivisional lines, the subdivision and metes-and-bounds survey of sec. 7, Township 2 South, Range 4 West, of the Indian Meridian, Oklahoma, accepted September 30, 2008, for Group 166 OK.

The plat representing the dependent resurvey of a portion of the east boundary, subdivisional lines, and survey of the Canadian River in sec. 25, Township 5 North, Range 7 East, of the Indian Meridian, Oklahoma, accepted September 30, 2008, for Group 167 OK.

The plat representing the dependent resurvey of a portion of the boundary between the States of Oklahoma, Missouri, and Kansas, subdivisional lines, a portion of the subdivision and metes-and-bounds survey of sec. 17, Township 29 North, Range 25 East, of the Indian Meridian, Oklahoma, accepted January 15, 2009, for Group 169 OK.

The plat representing the dependent resurvey of a portion of the north boundary, and subdivisional lines, the subdivision and metes-and-bounds survey of a certain parcel in sec. 3, Township 9 North, Range 10 West, of the Indian Meridian, Oklahoma, accepted January 8, 2009, for Group 170 OK.The plat representing the dependent resurvey of a portion of the north boundary, the subdivisional lines, portions of the subdivision of secs., 4, 5, 9 and 10, and portions of a metes-and-bounds survey in secs., 4, 5, 9 and 10, Township 7 North, Range 10 West, of the Indian Meridian, Oklahoma, accepted January 8, 2009, for Group 170 OK.

The plat representing the dependent resurvey of a portion of the

subdivisional lines, and survey of the Salt Fork of the Arkansas River sec. 14, Township 27 North, Range 10 West, of the Indian Meridian, Oklahoma, accepted December 11, 2008, for Group 177 OK.

If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plat is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been addressed. A person or party who wishes to protest against this survey must file a written protest with the New Mexico State Director, Bureau of Land Management at the address below, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Fiche copies may be obtained from this office upon payment of $1.10 per sheet. Contact Marcella Montoya at 505–438–7537, or *Marcella_Montoya@nm.blm.gov*, for assistance.

Robert A. Casias,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. E9–2007 Filed 1–29–09; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV056000.L58530000.EU0000; N–81965 et al; 9–08807; TAS: 14X5232]

Correction to Notice of Realty Action: Competitive Online Auction of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: This notice corrects a Notice of Realty Action published in the **Federal Register**, Volume 73, No. 247, pages 78825 through 78827, on Tuesday, December 23, 2008, which listed an incorrect legal land description and omitted the opening date of an online sale auction.

FOR FURTHER INFORMATION CONTACT: Manuela Johnson at *manuela_johnson@nv.blm.gov* or (702) 515–5224.

SUPPLEMENTARY INFORMATION: The erroneous legal land description is on page 78825, 2nd column, 8th line. The legal land description is corrected to read: SE¼SE¼SW¼NW¼. The opening sale date for the competitive online auction is April 21, 2009.

All other aspects of the notice are correct as published.

Dated: January 16, 2009.

Anna M. Wharton,

Acting Assistant Field Manager, Division of Lands.

[FR Doc. E9–2010 Filed 1–29–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW158866]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Whiting Oil and Gas Corporation for Noncompetitive oil and gas lease WYW158866 for land in Uinta County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Acting Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW158866 effective September 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Acting Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–1965 Filed 1–29–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for the West Potomac Park Levee Project Notice of Availability

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Council of Environmental Quality regulations and National Park Service policy, this notice announces the availability of an Environmental Assessment (EA) for the improvements to the existing West Potomac Park Levee System which extends from 23rd Street, NW., to the grounds of the Washington Monument. The goal of this project is to improve the reliability of the existing levee in order to meet the current post-Hurricane Katrina standards for flood protection as required by the U.S. Army Corps of Engineers (USACE) and the Federal Emergency Management Agency (FEMA). The existing levee protects much of the monumental core and large portions of downtown Washington, DC.

DATES: There will be a 30-day public review period for comment on this document. Comments on the EA should be received no later than March 2, 2009.

ADDRESSES: Comments should be submitted either via the National Park Service Planning, Environment, and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/projectHome.cfm?parkID=427&projectId=22260*) or in writing to Mr. Doug Jacobs, Deputy Associate Regional Director for Lands, Resources and Planning, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242. Copies of the EA can be downloaded from PEPC and will also be available for review at the National Capital Region Headquarters, 1100 Ohio Drive, SW., Washington, DC 20242

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 our comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Jacobs, Deputy Associate Regional Director for Lands, Resources, and Planning at (202) 619–7025.

SUPPLEMENTARY INFORMATION: Based upon new policies adopted since Hurricane Katrina, the USACE has deemed the 17th Street temporary barrier unreliable and decertified the levee. FEMA is responsible for issuing floodplain maps. FEMA proposes to treat the 17th Street closure as though it does not exist, putting a large portion of the monumental core and downtown Washington, DC, within the 100-year flood zone.

If the map is published as FEMA proposes, the buildings located within this zone would be required to buy additional flood insurance and/or make costly upgrades to comply with building standards for facilities within a 100-year floodplain. In addition, projects that are currently in development would need to be revised and could be delayed in order to comply with these building codes. At the request of the District of Columbia (District), FEMA has agreed to delay the final issuance of the new floodplain mapping until November 2009 to allow the District and other affected federal agencies time to design and implement an interim solution that will reliably stop the 100-year flood at 17th Street.

Due to the compressed deadline, the National Park Service has been working in collaboration with the District, USACE, the State Historic Preservation Officer, and the staffs of the National Capital Planning Commission and the Commission of Fine Arts to develop an appropriate range of alternatives. The EA evaluates five alternatives, all of which incorporate a permanent structure from Overlook Terrace in Constitution Gardens to the west side of 17th Street and another permanent structure on the east side of 17th Street which extends into the natural rise of the Washington Monument Grounds. The intervening space across 17th Street will have footings designed to receive a temporary post and panel closure system that would be deployed only during a major flood event. The permanent structures on either side of 17th Street will be a combination of earthen berms and concrete walls/embankments which will be clad in stone during a subsequent phase of the project. Alternative 1 has been identified as the preferred alternative and has been fully coordinated with the National Mall Plan which is currently under development by the National Park Service.

The alternative selected in the EA will be further developed into preliminary and final designs which will be subject to additional review by the National Park Service, the National Capital Planning Commission and the Commission of Fine Arts.

Dated: January 15, 2009.

Margaret O'Dell,

Regional Director, National Capital Region.

[FR Doc. E9–2049 Filed 1–29–09; 8:45 am]

BILLING CODE 4312–JK–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands National Recreation Area Advisory Council; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Boston Harbor Islands National Recreation Area.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Boston Harbor Islands National Recreation Area Advisory Council will be held on Wednesday, March 4, 2009, at 6 p.m. to 8 p.m. at New England Aquarium, Central Wharf, Boston, MA.

This will be the annual meeting of the Council. The agenda will include a presentation on park stewardship, membership review and election of officers, park update and public comment.

The meeting will be open to the public. Any person may file with the Superintendent a written statement concerning the matters to be discussed. Persons who wish to file a written statement at the meeting or who want further information concerning the meeting may contact Superintendent Bruce Jacobson at (617) 223–8667.

DATES: March 4, 2009 at 6 p.m.

ADDRESSES: New England Aquarium, Central Wharf, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Superintendent Bruce Jacobson, (617) 223–8667.

SUPPLEMENTARY INFORMATION: The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands NRA.

Dated: January 9, 2009.

Bruce Jacobson,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. E9–2045 Filed 1–29–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Notice of a meeting for Denali National Park Subsistence Resource Commission.

SUMMARY: The Denali National Park Subsistence Resource Commission (SRC) will meet to develop and continue work on National Park Service (NPS) subsistence hunting program recommendations and other related subsistence management issues. This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. The NPS subsistence resource commission program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Amy Craver, Subsistence Manager, Tel. (907) 683–9544, Address: Denali National Park and Preserve, P.O. Box 9, Denali National Park, AK 99755 or Clarence Summers, Subsistence Coordinator, Tel. (907) 644–3603.

Proposed Meeting Date: The SRC meeting will be held on Friday, February 27, 2009 from 9 a.m. to 5 p.m.

Location: Denali Dome Home Bed and Breakfast, Healy, AK.

The proposed SRC meeting agenda includes the following:

1. Call to Order by Chair
2. Roll Call and Confirmation of Quorum
3. Superintendent's Welcome and Introductions
4. Approval of Minutes from Last Commission Meeting
5. Additions and Corrections to Draft Agenda

6. Public and Other Agency Comments
7. Old Business
8. New Business
   a. Regional Office Update
   b. State Game Board Actions on NCPA's Proposals
   c. Wildlife Regulatory Timeline for Federal Subsistence Board Actions
   d. Project Updates
   e. Denali's Subsistence Management Plan
   f. Response to letter from the Public
9. NPS Reports and Updates
   a. Ranger Division Update
   b. Resource Management Program Update Fish and Wildlife Updates
10. Public and Other Agency Comments
11. Set Time and Place of next Denali SRC Meeting
12. Adjournment

SUPPLEMENTARY INFORMATION: SRC meeting location and date may need to be changed based on weather or local circumstances. If meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. The meeting may end early if all business is completed.

Dated: December 23, 2008.

Sue E. Masica,

Regional Director.

[FR Doc. E9–2040 Filed 1–29–09; 8:45 am]

BILLING CODE 4310–PF–P

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of U.S. Nominations to the World Heritage List

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of Decision To Submit Nominations to the World Heritage List.

SUMMARY: This notice constitutes the official publication of the decision to submit nominations to the World Heritage List for Papahanaumokuakea Marine National Monument, Hawaii, and Mount Vernon, Virginia, and serves as the Third Notice referred to in Sec. 73.7(j) of the World Heritage Program regulations (36 CFR part 73).

The nominations are being submitted through the Department of State for consideration by the World Heritage Committee, which will likely occur at the Committee's 34th annual session in mid-2010.

These two properties have been selected from the U.S. World Heritage Tentative List. The Tentative List consists of properties that appear to qualify for World Heritage status and which may be considered for nomination by the United States to the World Heritage List. The current U.S. Tentative List was transmitted to the UNESCO World Heritage Centre on January 24, 2008.

The new U.S. Tentative List appeared in a **Federal Register** notice on March 19, 2008 (73 FR 14835–14838, March 19, 2008) with a request for public comment on possible initial nominations from the 14 sites on the U.S. Tentative List, particularly for the two sites named above.

The comments received and the Department of the Interior's responses to them as well as the Department's decision to request preparation of these two nominations appeared in a subsequent **Federal Register** Notice published on July 8, 2008 (73 FR 39036–39039, July 8, 2008). The Department considered public comments received during the comment period as well as the advice of the Federal Interagency Panel for World Heritage in making the decisions to submit the two U.S. World Heritage nominations. Both properties meet the legal prerequisites for nomination by the United States to the World Heritage List. They appear to meet one or more of the World Heritage criteria and all owners of the two sites support the nomination of these nationally significant properties to the World Heritage List.

Papahanaumokuakea Marine National Monument was selected for nomination in part because it would, as a marine site and a mixed cultural and natural site in the Pacific, fill conspicuous gaps in the U.S. portfolio of World Heritage Sites. Similar gaps likewise exist in the World Heritage List as a whole, wherein few marine, Pacific, or mixed sites are listed. The State of Hawaii, the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, the three co-stewards of the Monument, are strongly supportive of the nomination.

George Washington's Mount Vernon likewise would fill a gap in the U.S. cultural site list and on the World Heritage List as a whole. It is an outstanding example of a type of colonial cultural landscape that was tied to the plantation economy based on slavery that prevailed in the American South during the colonial and early Federal periods. It is also the primary illustration of the early historic preservation movement in the United States. The Mount Vernon Ladies Association, the owner, strongly supports the property's nomination.

DATES: The World Heritage Committee will likely consider the nominations at its 34th annual session in mid-2010.

FOR FURTHER INFORMATION CONTACT: Stephen Morris, 202–354–1803 or Jonathan Putnam, 202–354–1809. For summary information on the U.S. Tentative List and how it was developed, please see the March 19, 2008, **Federal Register** notice (73 FR 14835–14838, March 19, 2008). Complete information about U.S. participation in the World Heritage Program and the process used to develop the Tentative List is posted on the Office of International Affairs Web site at: *http://www.nps.gov/oia/topics/worldheritage/tentativelist.htm.*

To request paper copies of documents discussed in this notice, please contact April Brooks, Office of International Affairs, National Park Service, 1201 Eye Street, NW., (0050) Washington, DC 20005. E-mail: *April_Brooks@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The United States was the prime architect of the Convention, an international treaty for the preservation of natural and cultural heritage sites of global significance proposed by President Richard M. Nixon in 1972, and the U.S. was the first nation to ratify it. In 2005, the United States was elected to a fourth term on the World Heritage Committee and will serve until 2009. The Committee, composed of representatives of 21 nations elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List at its annual meeting each summer.

There are 878 sites in 145 of the 185 signatory countries. Currently there are 20 World Heritage Sites in the United States already listed.

U.S. participation and the roles of the Department of the Interior and the National Park Service are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR 73—World Heritage Convention. The Department of the Interior has the lead role for the U.S. Government in the implementation of the Convention; the National Park Service serves as the principal technical agency within the Department for World Heritage matters and manages all or parts of 17 of the 20 U.S. World Heritage Sites currently listed.

A Tentative List is a national list of natural and cultural properties appearing to meet the World Heritage Committee's eligibility criteria for

nomination to the World Heritage List. It is a list of candidate sites which a country intends to consider for nomination within a given time period. A country cannot nominate a property unless it has been on its Tentative List for a minimum of a year. Countries also are limited to nominating no more than two sites in any given year.

The World Heritage Committee's Operational Guidelines ask participating nations to provide Tentative Lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee to schedule its work over the long term. The Guidelines recommend that a nation review its Tentative List at least once every decade.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject only to U.S. and local laws. Inclusion in the Tentative List merely indicates that the property may be further examined for possible World Heritage nomination in the future.

U.S. World Heritage Nominations: 2009

Papahanaumokuakea Marine National Monument, Hawaii

This 1,200-mile-long string of islands, atolls, coral reefs and adjacent waters, running northwest from the main Hawaiian islands and encompassing over 89 million acres, is one of the world's largest and most significant marine protected areas. Scattered in the deep ocean are some 10 small islands along with extensive reefs and shoals. In this remote and still relatively pristine part of the Pacific, marine life flourishes, and the area is home to a large number of species found nowhere else in the world, including a wide array that are threatened and endangered. Large populations of seabirds nest on isolated sandy shores and the waters harbor impressive numbers of large predatory fish. The geology of the islands is also highly significant—the chain represents the longest, clearest, and oldest example of island formation and atoll evolution in the world.

Native Hawaiians reached these islands at least 1,000 years before any other people and established settlements on some of them. The islands, along with their significant archeological sites, retain great cultural and spiritual significance to Native Hawaiians.

Mount Vernon, Virginia

George Washington's long-time home, with its associated gardens and grounds, forms a remarkably well-preserved and extensively documented example of a plantation landscape of the 18th-century American South. It was based on English models but modified and adapted to its American context, which included slave labor as an economic basis. There is a core of 14 surviving 18th-century structures set in a landscape of gardens, fences, lanes, walkways, and other features, situated along the Potomac River, that changed and developed over many years in Washington's family. The Mount Vernon Ladies' Association has owned and maintained the property for 150 years.

Authority: 16 U.S.C. 470a–1, a–2, d; 36 CFR 73.

Dated: January 16, 2009.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–2044 Filed 1–29–09; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1146–1147 (Final)]

1–Hydroxyethylidene-1,1–Diphosphonic Acid (HEDP) From China and India

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

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

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov).* The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective October 21, 2008, the Commission established a schedule for the conduct of the final phase of the subject investigations (73 FR 67545, November 14, 2008). As a result of subsequent events, however, the Commission is revising its schedule.

The Commission's new schedule for the investigations is as follows: The Commission will make its final release of information on March 30, 2009; and final party comments are due on April 1, 2009.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 15, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–1977 Filed 1–29–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0005]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR–27).

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 31, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with

instructions or additional information, please contact John N. Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–27. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys and qualified representatives notifying the Board of Immigration Appeals (Board) that they are representing an alien in immigration proceedings. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Board that he or she is representing an alien before the Board.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 33,980 respondents will complete the form annually with an average of six minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,398 total burden hours associated with this collection annually.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 27, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–2090 Filed 1–29–09; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review.

Civil Justice Survey of State Courts Trials on Appeal.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 31, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Thomas H. Cohen, (202) 514–8344, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, 810 Seventh Street, NW., Washington, DC 20531 or *Thomas.H.Cohen@usdoj.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information

(1) *Type of information collection:* New information collection, Civil Justice Survey of State Courts Trials on Appeal.

(2) *The title of the form/collection:* Civil Justice Survey of State Courts Trials on Appeal.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form labels are CJSSCTA–IAC, CJSSCTA–COLR, and CJSSCTA–ADR, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State Appellate Courts. The purpose of the CJSSCTA project is to provide detailed statistical information on civil cases adjudicated at the appellate level in state courts. The project will collect information from court records on individual civil cases disposed in a sample of state intermediate appellate courts and courts of last resort. The types of information collected will include the types of civil cases appealed after trial to an intermediate appellate court or court of last resort, the impact of the appellate process on trial court outcomes, the extent that appellate claims are dismissed or withdrawn before being decided on the merits, the types of legal issues raised on appeal, the number of appeals ending in a published opinion, and the rate of judicial dissent at the appellate level. The survey will also collect aggregate count information on the number of appeals referred to and

settled through court annexed alternative dispute resolution programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that information will be collected on 1,500 civil cases concluded by trial in 2005 in which either the plaintiff or defendant filed a notice of appeal to an intermediate appellate court or court of last resort. Information will also be collected on the number of cases filed and disposed in court annexed alternative dispute resolution programs. Annual cost to the respondents is based on the number of hours involved in providing information from court records for the intermediate appellate court, court of last resort, and alternative dispute resolution forms. Public reporting burden for this collection of information is estimated to average 1.5 hours per data collection form for the intermediate appellate court and court of last resort forms and 2 hours for the alternative dispute resolution forms. The estimate of hour burden is based on prior civil justice data collections and pre-tests of the current forms.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 830 hours. It is estimated that on-site data collection will be necessary for about 500 of the 1,500 civil appeals. Hence, the estimated burden hour to complete each of the appellate data collection forms will result in a total of 750 burden hours to complete the CJSSCTA (500 data collection forms multiplied by 1.5 hours per form = 750 burden hours). In addition to the case level appellate data collection forms, it is estimated that 40 appellate courts will have some form of court—annexed alternative dispute resolution (ADR) program. The estimated burden hour to complete the ADR spreadsheets for the participating appellate courts will result in a total of 80 burden hours to complete the ADR portion of this project: (40 appellate courts with ADR programs multiplied by 2 hours per coding spreadsheet = 80 burden hours). Therefore, the total burden hours for the CJSSCTA amounts to 830 burden hours (750 burden hours to complete the case level appellate forms +80 hours to complete the ADR spreadsheets).

If additional information is required contact: Ms. Lynn Byrant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 27, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–2091 Filed 1–29–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0111]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: National Crime Victimization Survey (NCVS).

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 31, 2009.

This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Katrina Baum, Statistician, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531, or facsimile (202) 307–1463.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Crime Victimization Survey.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* NCVS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Persons 12 years or older living in NCVS sampled households located throughout the United States. The National Crime Victimization Survey (NCVS) collects, analyzes, publishes, and disseminates statistics on the criminal victimization in the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* An estimate of the total number of respondents is 77,600. It will take the average interviewed respondent an estimated 23 minutes to respond, the average non-interviewed respondent an estimated 7 minutes to respond, the estimated average follow-up interview is 12 minutes, and the estimated average follow-up for a non-interview is 1 minute.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 53,510 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 27, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–2093 Filed 1–29–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 26, 2009.

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 website 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: Extension without change of a currently approved collection.

Title of Collection: Prisoner Reentry Initiative (PRI) Reporting System.

OMB Control Number: 1205–0455.

Description: Respondents are Faith-Based and Community Organizations grantees. Selected standardized information pertaining to customers in Prisoner Reentry Initiative (PRI) programs is collected and reported for the purposes of general program oversight, evaluation and performance assessment. ETA provides all grantees with a PRI management information system to use for collecting participant data and for preparing and submitting the required quarterly reports. For additional information, see related notice published at Volume 73 FR 41126 on July 17, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–1953 Filed 1–29–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Proposed Information Collection Extension Without Change for Forms Relating to the Standard Center Job Corps Request for Proposal, and Related Contractor Information Gathering and Reporting Requirements (OMB Control Number 1206–0219): Comment Request

AGENCY: Office of Job Corps.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Job Corps is soliciting comments concerning the collection of data for forms relating to the standard contractor information gathering and reporting requirements (OMB Control Number 1206–0219).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before March 31, 2009.

ADDRESSES: Submit written comments to Marsha Fitzhugh, Room N–4507 Office of Job Corps, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–3099 (this is not a toll-free number). Fax: 202–693–2764. E-mail: *fitzhugh.marsha@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. *Background:* Job Corps is an intensive, residential training program for at-promise youth age 16 through 24 to address multiple barriers to employment faced by youth throughout the United States. Job Corps is authorized by Title I, Subtitle C, of the Workforce Investment Act (WIA) of 1998. The program is principally carried out through a nationwide network of 122 Job Corps centers. The centers are located at facilities either owned or leased by the Federal Government. The Department has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program. It is the Department's responsibility to establish Job Corps centers and to select operators for them. Of the 122 current centers, 28 are operated by the Departments of Agriculture and the Interior, through interagency agreements. These centers are located on Federal lands controlled by these two agencies. The remaining 94 centers are managed and operated by large and small corporations and nonprofit organizations selected by the Department in accordance with the Federal Acquisition Regulations, and in most cases through a competitive procurement process. Many of the current contractors manage and operate more than one center.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Request for Proposal (RFP) provides potential offerors with the Government's expectations for the development of proposals to operate Job Corps centers. The proposals developed by offerors in response to the RFP are evaluated in terms of technical factors and costs. These proposals serve as the principal basis for selection of a successful offeror. The operation of the Job Corps program is such that many activities required of contractors must be coordinated with other organizations, both Federal and nonfederal. Most of the information collection requirements of Job Corps center operators stem directly from operational needs or are necessary to ensure compliance with Federal requirements and the terms of the contract. Statistical reports are normally generated from source documents directly by the Federal Government, not the contractors. Data is entered directly into a database and reports are generated as a result of the data. Examples of these are ETA Forms 2110 (Center Financial Report), 2181 & 2181A (Center Operations Budget), 6–127 (Job Corps Utilization Summary), 6–131A (Disciplinary Discharge), 6–131B (Review Board Hearings), 6–131C (Rights to Appeal), 6–40 (Student Profile), 6–61 (Notice of Termination) and 3–38 (Property Inventory Transcription.) In addition, several forms are provided in Portable Data File (PDF) format. These forms are the 6–125 (Job Corps Health Staff Activity), 6–128 (Job Corps Health Annual Service Costs), 6–112 (Immunization Record), 6–135 (CM Health Record Envelope), 6–136 (CM Health Record Folder), 6–37 (Inspection Residential & Educational Facilities), 6–38 (Inspection Water Supply Facilities), and 6–39 (Inspection of Waste Treatment Facilities Costs).

Type of Review: Extension without Change.

Agency: Office of the Secretary, U.S. Department of Labor.

Title: Standard Center Job Corps Request for Proposal, and Related Contractor Information Gathering Reporting Requirements.

OMB Number: 1205–0219.

Recordkeeping: Center operators are required to keep accurate records on each Job Corps student. All records are required to be maintained on center for five years.

Affected Public: Business, for profit and not-for-profit institutions, and Tribal Governments.

The annual burden hours estimated for the preparation of the Standard Center Job Corps Request for Proposal submitted by new and experienced contractors is 15,300 hours.

Data collection for the Center Financial and the Center Operations Budget Reports is made more than quarterly, and is essential to ensure contractor financial compliance with contractual requirements and to ensure orderly operations of the program.

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Center Financial Report	2110	122	90 at 12/year	1240	1	1240
Center Operations Budget	2181/h 2181/A	94	28 at 4/year 3	282	1	282
Total						1,522

Center staff enter data utilizing a personal computer that transmits the data electronically to a centralized database. From this database many management and performance reports are created.

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Job Corps Utilization Summary	6–127	122	12	1,464	0.01875 (1 minute)	24
Disciplinary Discharge	6–131A	1,500	1	1,500	0.01875	25
Review Board Hearings	6–131B	1,500	1	1,500	0.01875	25
Rights to Appeal	6–131C	1,500	1	1,500	0.01875	25
Student Profile	6–40	1,500	1	1,500	0.01875	25
Notice of Termination	6–61	1,500	1	1,500	0.01875	25
Property Inventory Transcription	3–28	126	52	6,552	0.0275 (3 minutes)	328
Total						477

Student personnel requirements such as: Student payroll information, student training and education courses received, student leave, disciplinary actions and medical information are also collected in an electronic information system. The initial data entry is maintained in the national database and used for multiple reporting purposes, therefore reducing the need to enter the data more than once. The total burden associated with the input of data to data screens is 20,347 hours.

Major record keeping and operational forms listed below that pertain to student and facility administrative matters are provided in Portable Data Files or PDF forms. The total burden for processing these forms is 37,648 hours.

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Job Corps Health Staff Activity	6–125	112	1	112	0.25 (25 min)	51
Job Corps Health Annual Service Costs	6–128	112	1	112	0.25	51
Immunization Record	6–112	71,000	1	71,000	0.05 (5 min)	5,917
CM Health Record Envelope	6–135	71,000	1	71,000	0.125 (13 min)	15,383
CM Health Record Folder	6–136	71,000	1	71,000	0.125	15,383
Inspection of Residential & Educational Facilities	6–37	122	4	488	0.5	41
Inspection of Waste Treatment Facilities Costs	6–39	23	4	92	1.25 (1 hr. 25 min)	130
Inspection Water Supply Facilities	6–38	122	4	488	1.25	693
Total						36,648

A total of 7,578 burden hours are estimated for the preparation of the Center Operating Plans listed below that are required for the operation of a Job Corps center.

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Center Operation Plan		90	1	90	30	2820
Maintenance		122	1	122	5	610
C/M Welfare		122	1	122	2	244
Annual VST		122	1	122	24	2928
Annual Staff Training		122	1	122	1	122
Energy Conservation		122	1	122	5	610
Outreach		122	1	122	2	244
Total						7,578

Total Estimated Burden: 62,525 hours.

Total Burden Cost (Capital/Startup): The Office of Job Corps has automated the data collection process for its centers. The Center Information System allows all centers to directly input data into a national database. The maintenance cost associated with the system is estimated to be $2.7 million a year for hardware and software.

Total Burden Cost (Operating/Maintaining): The costs to contractors for accomplishing record keeping requirements are computed by the Federal Government annually. While precise costs cannot be identified, at the present time and based on past experience, the annual related costs for contractor staff are estimated to be $968,834, which represents an average cost of $15.12 per hour.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 13, 2009.

Esther R. Johnson,

Administrator, Office of Job Corps.

[FR Doc. E9–2025 Filed 1–29–09; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Implementation of Interstate Arrangement for Combining Employment and Wages; New Definition of Paying State for Combined-Wage Claims

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the United States Department of Labor (the Department) is publishing, for public information, notice of the issuance and availability of the Unemployment Insurance Program Letter (UIPL) that provides guidance to the states regarding the implementation of the new definition of ''paying state'' for an unemployment compensation (UC) combined-wage claim (CWC) filed under the Interstate Arrangement for Combining Employment and Wages, as amended at 73 **Federal Register** (FR) 63038 (October 23, 2008).

FOR FURTHER INFORMATION CONTACT: Stephanie C. Garcia, 202–693–3207.

SUPPLEMENTARY INFORMATION: The CWC program allows an unemployed individual with employment and wages in more than one state to combine his/her wages to establish a CWC under the law of a single state called the ''paying state'' to qualify for benefits or to receive additional benefits (i.e., a higher weekly benefit amount). On October 23, 2008, the U.S. Department of Labor published a final rule in the **Federal Register** changing the definition of ''paying state.'' Effective January 6, 2009, the definition of ''paying state'' at 20 CFR 616.6(e) is amended to mean a single state against which the claimant files a CWC, if (1) the claimant has employment and wages in that state's base period, and (2) the claimant qualifies for unemployment compensation in that state using the combined employment and wages.

On November 14, 2008, UIPL No. 1–09 was issued. The complete text of the guidance documents are provided in

this notice. In addition, the guidance documents are available on the ETA Advisory Web site: UIPL No. 1–09 -at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2681*.

Unemployment Insurance Program Letter No. 1–09

To: State Workforce Agencies.

From: Brent R. Orrell, Deputy Assistant Secretary.

Subject: Interstate Arrangement for Combining Employment and Wages; New Definition of Paying State for Combined-Wage Claims.

1. *Purpose.* To provide guidance to states regarding the change in the definition of ''paying state'' for an unemployment compensation (UC) combined-wage claim (CWC) filed under the Interstate Arrangement for Combining Employment and Wages.

2. *References.* Section 3304(a)(9)(B) of the Federal Unemployment Tax Act (FUTA), 20 CFR Part 616; ET Handbook No. 399; ET Handbook No. 392; 20 CFR Part 616, as amended at 73 **Federal Register** (FR) 63068 (October 23, 2008).

3. *Summary.* The CWC program allows an unemployed individual with employment and wages in more than one state to combine his/her wages to establish a CWC under the law of a single state called the ''paying state'' to qualify for benefits or to receive additional benefits (i.e., a higher weekly benefit amount). On October 23, 2008, the U.S. Department of Labor published a final rule in the **Federal Register** changing the definition of ''paying state.'' Effective January 6, 2009, the definition of ''paying state'' at 20 CFR 616.6(e) is amended to mean a single state against which the claimant files a CWC, if (1) the claimant has employment and wages in that state's base period, and (2) the claimant qualifies for UC in that state using the combined employment and wages. (73 FR 63068 (Oct. 23, 2008)).

All 50 states, plus the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands are required to participate in the Interstate Arrangement for Combining Employment and Wages and will be affected by this change. The attached set of questions and answers provide guidance to states about the new definition of paying state and the states' responsibilities for providing CWC filing options.

4. *Action.* Administrators are requested to provide this information to appropriate staff.

5. *Inquiries.* States should direct questions to the appropriate Regional Office.

6. *Attachments.*

Attachment #1: Combined-Wage Claims—Questions and Answers on the New Definition of Paying State.

Attachment #2: States' Responsibilities for Providing Combined-Wage Claim (CWC) Filing Options Effective January 6, 2009.

Attachment #3: Sample Scripts for Providing Combined-Wage Claim (CWC) Filing Options.

Attachment 1 to UIPL No. 1–09

Combined-Wage Claims; Questions and Answers on the New Definition of Paying State

A. New Definition of Paying State

1. *Question:* How does the new definition of paying state change the way an individual files a CWC?

Answer: Prior to the new amendment, which becomes effective on January 6, 2009, the paying state is the state in which the individual files the CWC (usually the state where the individual is physically located at the time of filing a CWC), if s/he qualifies for benefits under the UC law of that state on the basis of combined employment and wages. The current definition also identifies the paying state when the individual does not qualify for unemployment benefits under the UC law of the state in which s/he files the CWC or when the individual applies for a CWC from Canada.

Effective January 6, 2009, the new definition of paying state for a CWC is the state against which the individual elects to file a CWC, provided the individual has employment and wages in that state's base period(s), and the individual qualifies for UC under the law of that state using combined employment and wages. (*See* revised 20 CFR 616.6(e).)

2. *Question:* What is the earliest possible effective date of an initial CWC based on the new rule?

Answer: The earliest possible effective date of an initial CWC based on the new rule is Tuesday, January 6, 2009, in states where the effective date of an initial claim may begin on a Tuesday. In most states, where weeks of unemployment begin on Sunday, the earliest effective date of a CWC is Sunday, January 11, 2009. This means that individuals filing a CWC in these states during the week beginning Sunday, January 4, 2009, will be subject to the regulations prior to the amendment. Individuals filing a CWC during the week beginning Sunday, January 11, 2009, and thereafter, will be subject to the amended rule that is effective January 6, 2009.

B. States' Responsibilities Regarding the New Definition of Paying State

1. *Question:* When an individual contacts a state about filing a CWC, what are the state's responsibilities in advising the individual of his/her options?

Answer: The responsibility of the state varies depending on the circumstances of the individual.

If the individual has employment and wages in the state, the state must advise the individual of the state's qualifying requirements and his/her potential eligibility for benefits (if any) under its law. The individual must also be told that s/he has the option to file in any other state(s) where s/he has employment and wages. The state must advise the individual that there are differences in weekly benefit amounts and other qualifying requirements (i.e., state laws vary). If the individual wishes to explore options with any other state(s), the state must provide information about how to contact any such state(s).

If the individual has no employment and wages in the state, the state must provide general information about the CWC program and information about how to contact the state(s) where the individual has employment and wages. (*See* Attachment 2.)

2. *Question:* Does the new definition of paying state require states to follow any specific order in determining which state is the paying state for a CWC claim?

Answer: No. Individuals may establish a CWC in any state in which they have employment and wages in the base period(s) of the state and qualify based on combining their wages. This includes individuals residing in Canada who have performed work in the United States.

3. *Question:* How will individuals determine the appropriate state to file a CWC?

Answer: The individual is responsible for deciding the state against which to file a CWC. States receiving inquiries from individuals potentially eligible to apply for CWCs must assist such individuals by providing general information about the CWC program advising that states' programs/entitlements vary and contact information for the state(s) where the individual worked.

States may refer individuals to America's Service Locator, which is located at: *http://www.servicelocator.org/OWSLinks.asp* and/or to specific states' Web sites.

4. *Question:* How does the state inform the individual of other filing

options when a state determines that an individual is monetarily ineligible for a CWC after all wage transfers are complete?

Answer: Under the new rule, a state's written determination of monetary ineligibility under a CWC must contain information indicating that the individual may file a CWC claim in another state where the individual has employment and wages during the state's base period(s). (See revised 20 CFR 616.7(f).) States will meet this requirement by including a statement such as the following:

> You may be eligible for benefits on the basis of combining your employment and wages in another state where you have worked. To file a claim, you will need to contact the other state(s) where you worked.

5. *Question:* Prior to the new amendment, there were cases where the paying state did not know if wages from other states were available for transfer. Does the new definition affect the way states handle these cases?

Answer: The new amendment does not change current procedures in this regard. When a state is a potential paying state, it should assist the individual in filing a CWC when the individual wishes to pursue a claim. As in the past, there will be some instances where individuals' wages will not be available for use on a CWC because of administrative complications. States will need to address these cases on an individual basis. In some cases, a claim may need to be withdrawn and a backdated claim filed with another state. States should follow existing backdating policies and procedures.

6. *Question:* Does the new definition affect the way Federal (civilian and/or military) wages are assigned?

Answer: The rules about the assignment of Federal wages have not changed.

C. CWC Filing Options

1. *Question:* When an individual has employment and wages in more than one state, must the individual file a CWC?

Answer: No, filing a CWC remains voluntary on the part of the individual. (Refer to 20 CFR 616.7(a) and (c).)

2. *Question:* Under the new definition may an individual establish a CWC under the law of the state where s/he resides?

Answer: Yes, but only if the individual has sufficient base period wages to qualify for benefits in the state of residence. An individual's residence is *not* relevant in determining the paying state. (Refer to 20 CFR 616.6(e).)

3. *Question:* The individual is eligible in State A for a regular intrastate claim using regular base period wages. State A also has an alternative base period, but it is available only if the individual is monetarily ineligible under the state's regular base period. The individual could also establish eligibility in State B, where s/he has lag quarter wages, which permits the use of the alternative base period at the individual's option. What are this individual's filing options?

Answer: The individual has the option to establish: (1) a regular intrastate UC claim in State A, or (2) an interstate CWC against State B.

4. *Question:* Under the new definition, is an individual who has elected to withdraw a CWC filed in State A able to establish a CWC in State B in which s/he also has employment and wages?

Answer: Yes, provided the individual is otherwise eligible, does not have an active claim with available benefits in State A, and has covered employment and/or wages in State B. The fact that s/he has withdrawn a prior CWC from State A has no effect on whether s/he may establish a CWC in State B (or any other state in which s/he had employment and wages).

5. *Question:* What impact does the new rule have on the states' responsibilities for providing claim filing options to individuals potentially eligible to file CWCs?

Answer: A state will have different responsibilities with respect to an individual potentially eligible for a CWC depending on whether it is the CWC ''paying state,'' ''potential paying state,'' ''agent state,'' or ''inquiry state'' as defined below:

- A ''paying state'' is a single state against which the individual files a CWC, if the individual has employment and wages in that state's base period(s) and the individual qualifies for UC under that state's law using combined employment and wages.
- A ''potential paying state'' is a state in which an individual might establish a CWC.
- An ''agent state'' is the state that takes the interstate CWC on behalf of the paying state because the paying state does not accept interstate claims, including any interstate CWC, by phone/Internet.
- An ''inquiry state'' is the state contacted by an individual who is potentially eligible for a CWC, but who has no employment and wages in that state.

There are generally three levels of responsibility states will have with respect to providing filing options; these include inquiry filing options, detailed filing options and other filing options. (*See* Attachment 2.)

Attachment 2 to UIPL No. 01–09

States' Responsibilities for Providing Combined-Wage Claim (CWC) Filing Options Effective January 6, 2009

Inquiry Filing Options:

- States *without* base period employment and wages (an inquiry state) for the individual must provide:
  - ○ General information about the CWC program advising that states' programs/entitlements vary; and,
  - ○ Contact information for the state(s) where the individual worked during the base period(s) of such state(s).
- States *with* base period employment and wages (a potential paying state) for the individual must provide:
  - ○ General information about the CWC program advising programs/entitlements vary between states;
  - ○ Information about its eligibility requirements and the individual's potential eligibility (including weekly benefit amount, maximum benefit amount) under its law for:
    - ■ A regular UI claim; and/or a CWC (based on available information);
  - ○ if available, the maximum weekly benefit amount(s) of the other state(s) where the individual worked; and,
  - ○ contact information for the other state(s) where the individual worked during the base period(s) of such state(s).

Detailed Filing Options:

- States *with* base period employment and wages and any state(s) against which the individual decides to *file a claim* must provide:
  - ○ General information about the CWC program advising programs/entitlements vary between states;
  - ○ A review of the individual's work history to determine which filing options are available; and,
  - ○ Information about its eligibility requirements and the individual's potential eligibility (including weekly benefit amount, maximum benefit amount) under its law for:
    - ■ A regular UI claim; and/or a CWC.

If a state is an agent state taking the claim on behalf of the paying state, the agent state will provide detailed filing options using available information at the time the interstate CWC is filed/taken.

Other Filing Options:

- If a CWC ''paying state'' issues a determination that the claimant is monetarily ineligible on a CWC after all wages are transferred, it must provide information to the claimant about his/her right to establish a claim in another state where s/he worked in its written

determination of ineligibility. Language similar to the following will satisfy this requirement:

○ *You may be eligible for benefits on the basis of combining your employment and wages in another state where you have worked. To file a claim, you will need to contact the other state(s) where you worked.*

Attachment 3 to UIPL 1–09

Sample Scripts for Providing Combined-Wage Claim (CWC) Filing Options

Inquiry Filing Options:

• States *without* base period employment and wages (an inquiry state) for the individual must provide:

○ General information about the CWC program advising that states' programs/entitlements vary; and

○ Contact information for the state(s) where the individual worked during the base period(s) of such state(s).

An example of information that must be provided to an individual in a state where the individual has no employment or wages: ''Mr. Jones, because you have worked in three states, you may be able to establish an unemployment claim with any of those states under the Combined-Wage Claim program. Your wages will be combined and the amount of your benefits will be determined under the law of the state where you file your combined-wage claim. This might increase your benefit amount. You should know that state unemployment laws, weekly benefit amounts, and eligibility requirements vary between the states. I will provide information to you about how you may contact each of the states where you have worked to obtain this type of state information and their filing procedures. Although you may be eligible to receive unemployment benefits in more than one of these states, you may only establish a combined-wage claim against one of these states.''

• States *with* base period employment and wages (a potential paying state) must provide:

○ General information about the CWC program advising programs/entitlements vary between states;

○ Information about its eligibility requirements and the individual's potential eligibility (including weekly benefit amount, maximum benefit amount) under its law for:

■ A regular UI claim; and/or a CWC (based on available information);

○ If available, the maximum weekly benefit amount(s) of the other state(s) where the individual worked; and,

○ Contact information for the other state(s) where the individual worked during the base period(s) of such state(s).

An example of information that must be provided to an individual in a state where the individual has employment and wages (a potential CWC paying state): ''Mr. Jones, because you have worked in three states including this one, you may be able to establish an unemployment claim with any one of these states under the Combined-Wage Claim program. Your wages will be combined and your monetary entitlement will be determined under the law of the one state where you file your combined-wage claim. You should know that state unemployment laws, weekly benefit amounts, and eligibility requirements vary between the states. Can you tell me where you have worked in this state? (Follow your state's procedures on verifying identity.) Thank you. In what other states did you work? Based on the wages reported by your employer(s), you would qualify for a weekly benefit amount of $__ and a maximum benefit amount of $__ if you establish a claim in this state using only your wages earned here. If you establish a combined-wage claim here using wages earned in the other state(s), you would potentially qualify for a weekly benefit amount of $__ and a maximum benefit amount of $__. This amount is only an estimate and will not become final until all out-of-state wages are received here. As I mentioned before, state unemployment laws and benefit amounts vary between the states. Because of this, you may want to contact the other states where you have worked to find out your potential eligibility there before making a decision on which state to file in. Since I have information available concerning the maximum weekly benefit amounts in the two other states in which you worked I can provide it to you; the weekly amounts are $__ and $__. I will provide information to you about how you may contact each of the states where you have worked to obtain information about your potential entitlement in these states and their filing procedures. Although you may be eligible to receive unemployment benefits in more than one of these states, you may only establish a combined-wage claim against one state. Do you have any questions for me?''

Detailed Filing Options:

• States *with* base period employment and wages and any state(s) against which the individual decides to *file a claim* must provide:

○ General information about the CWC program advising programs/entitlements vary between states;

○ A review of the individual's work history to determine which filing options are available; and,

○ Information about its eligibility requirements and the individual's potential eligibility (including weekly benefit amount, maximum benefit amount) under its law for:

■ A regular UI claim; and/or a CWC.

If a state is acting as an agent state taking the claim on behalf of the paying state, the agent state will provide detailed filing options using available information at the time the interstate CWC is filed/taken.

Scenario 1. An example of information that must be provided to a individual when a filing decision (i.e., the state where s/he will file the CWC) has been made by the individual: ''Mr. Jones, because you have worked in three states including this one, you may be able to establish an unemployment claim with any of these states under the Combined-Wage Claim program. Your wages will be combined and the amount of your benefits will be determined under the law of the state where you establish your combined-wage claim. You should know that state unemployment laws, weekly benefit amounts, and eligibility requirements vary between the states. Can you tell me where you have worked in this state? (Follow your state's procedures on verifying identity.) Thank you. In what other states did you work? Based on the wages reported by your employer(s), you would qualify for a weekly benefit amount of $__ and a maximum benefit amount of $__ if you establish a claim using only your wages earned here. If you establish a combined-wage claim here using wages earned here and in the two other state(s), you would potentially qualify for a weekly benefit amount of $__ and a maximum benefit amount of $__. This amount is only an estimate and will not become final until all out of state wages are received here. As I mentioned before, state unemployment laws and benefit amounts vary between the states. Have you contacted the other states in which you worked to find out about your potential entitlement there? (Claimant answers yes.) Good. Would you like to establish a combined-wage claim with this state, using the wages you earned here and wages from the other two states in which you worked? (Claimant answers yes.) Great, I have a few more questions for you.''

Scenario 2. An example of information that must be provided to an individual when there is no employment and wages in the state, the individual has chosen to file an agent interstate CWC claim, and the liable CWC state does not accept phone or Internet claims: ''Mr. Jones, because you have worked in three other states, you may be able to establish an unemployment

claim with any of these states under the Combined-Wage Claim program. Your wages will be combined and the amount of your benefits will be determined under the law of the one state where you establish your combined-wage claim. You should know that state unemployment laws, weekly benefit amounts, and eligibility requirements vary between the states. Can you tell me where you have worked, the dates of such work and the states in which you worked? (Follow your state's procedures on verifying identity.) Thank you. Based on what you have provided to me, you could establish a claim with any of these states. Have you contacted any of these states to obtain information about potential eligibility? (Individual answers yes.) And, do you know which state you wish to establish a claim with? (Claimant answers yes and indicates s/he wants to file a claim with State A, which does not accept interstate claims by phone or Internet.) I will be happy to take your claim against State A for you. Please keep in mind that I am acting as their agent in taking your claim. You will receive detailed information about the amount of benefits for which you qualify and continuing filing instructions from that state. The exact amount of your entitlement will not become final until your claim is established and your wages are transferred to the paying state. I have a few more questions so let's get started.''

Signed at Washington, DC, this 26th day of January, 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration, U.S. Department of Labor.

[FR Doc. E9–2000 Filed 1–29–09; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering (CEOSE); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: February 19, 2009, 8:30 a.m.–5:30 p.m.; February 20, 2009, 8:30 a.m.–2 p.m.

Place: National Science Foundation (NSF), 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

To help facilitate your access into the building, please contact the individual listed below prior to the meeting so that a visitors badge may be prepared for you in advance.

Type of Meeting: Open.

Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and CEOSE Executive Liaison, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone Numbers: (703) 292–4216, (703) 292–8040, *mtolbert@nsf.gov.*

Minutes: Minutes may be obtained from the Executive Liaison at the above address or the Web site at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study NSF programs and policies and provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Thursday, February 19, 2009

Opening Statement by the CEOSE Chair
Presentations and Discussions:
✓ Communicating Science Broadly
✓ *Discussion of Recommendations from the October 29, 2008 Mini-Symposium on Native Americans*
✓ Conversation with the NSF Director
✓ Presentation on the Policy White paper on Women of Color in STEM
✓ Roundtable Discussion by NSF Assistant Directors and Office Directors: Diversity Issues & Recent Broadening Participation Activities
✓ Concurrent Meetings of CEOSE *Ad Hoc* Subcommittees
✓ Reports of CEOSE *Ad Hoc* Subcommittees, Including the Status of the Preparation of the Biennial Report to Congress and Comments by Federal Agency Liaisons

Friday, February 20, 2009

Opening Statement by the CEOSE Chair
Presentations and Discussions:
✓ A Science of Broadening Participation
✓ Discussion: The CEOSE Path Forward
✓ Reports by CEOSE Liaisons to Advisory Committees of the National Science Foundation
✓ Completion of Unfinished Business

Dated: January 27, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–2046 Filed 1–29–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site Visit review of the Partnership for Research and Education in Materials (PREM) at Jackson State University, Jackson MS (DMR) #1203.

Dates & Times: Monday, March 9, 2009; 7:45 a.m.–9 p.m.; Tuesday, March 10, 2009; 8 a.m.–3:30 p.m.

Place: Jackson State University, Jackson MS.

Type of Meeting: Part-open.

Contact Person: Dr. William Brittain, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–5039.

Purpose of Meeting: To provide advice and recommendations concerning further support of the Partnership for Research and Education in Materials (PREM) at Jackson State University, Jackson MS.

Agenda:

Monday, March 9, 2009

7:45 a.m.–9 a.m. Closed—Executive Session
9 a.m.–4 p.m. Open—Review of the Jackson State PREM
4 p.m.–6 p.m. Closed—Executive Session
6 p.m.–9 p.m. Open—Poster Session and Dinner

Tuesday, March 10, 2009

8 a.m.–9 a.m. Closed—Executive Session
9 a.m.–10 a.m. Open—Review of the Brown MRSEC
10 a.m.–3:30 p.m. Closed—Executive Session, Draft and Review Report

Reason For Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 27, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–1997 Filed 1–29–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site Visit review of the Materials Research Science and Engineering Center (MRSEC) at California Institute of Technology (Caltech), Pasadena, CA (DMR) #1203.

Dates & Times: Thursday, February 26, 2009, 2008; 7:45 a.m.–9 p.m., Friday, February 27, 2009; 8 a.m.–4:30 p.m.

Place: Caltech, Pasadena, CA.

Type of Meeting: Part-open.

Contact Person: Dr. Rama Bansil, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National

Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–8562.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at Caltech, Pasadena, CA.

Agenda:

Thursday, February 26, 2009

7:45 a.m.–9 a.m. Closed—Executive Session.
9 a.m.–4:30 p.m. Open—Review of the Caltech MRSEC.
4:30 p.m.–6 p.m. Closed—Executive Session.
6 p.m.–9 p.m. Open—Poster Session and Dinner.

Friday February 27, 2009

8 a.m.–9 a.m. Closed—Executive session.
9 a.m.–10:15 a.m. Open—Review of the Caltech MRSEC.
10:15 a.m.–4:30 p.m. Closed—Executive Session, Draft and Review Report.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 27, 2009.

Susanne Bolton,

Committee Management Officer..

[FR Doc. E9–1998 Filed 1–29–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Public Meeting and Request for Stakeholder Input

SUMMARY: The National Science Foundation (NSF) is requesting stakeholder input on Section 7033 of the America COMPETES Act, which authorizes the NSF Director to establish a new program to award grants on a competitive, merit-reviewed basis to Hispanic-serving institutions *to enhance the quality of undergraduate science, technology, engineering, and mathematics (STEM) education at such institutions and to increase the retention and graduation rates of students pursuing associate or baccalaureate degrees in STEM.*

DATES: The meeting will be held on Sunday, March 1, 2009, from 2 p.m. to 5 p.m. All comments not presented or submitted for the record at the meeting must be received by close of business Monday, March 23, 2009, to be considered.

ADDRESSES: The meeting will be held at the Madison Hotel in Washington, DC, at 1177 15th Street Northwest, Washington, DC 20005. You may submit comments, identified by the title NSF–HSI, using any of the following methods:

E-mail: nsf-hsiinput@lists.nsf.gov. Please include NSF–HSI in the subject line of the message.

Fax: 703–292–9232. Please address the cover sheet to Dr. Fae Korsmo.

Mail: Paper, disk or CD–ROM submissions should be submitted to: Dr. Fae Korsmo, Senior Advisor, Office of the Director, National Science Foundation, 4201 Wilson Boulevard, Suite 1205, Arlington, VA 22230.

All comments received will be posted to a publicly available Web page on *http://www.nsf.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Dr. Fae Korsmo, (703) 292–8002 (phone), (703) 292–9232 (fax), or *fkorsmo@nsf.gov.*

SUPPLEMENTARY INFORMATION:

Additional Meeting and Comment Procedures

Persons wishing to present oral comments at the March 1, 2009 meeting are requested to pre-register by e-mail to: *nsf-hsiinput@lists.nsf.gov.* Participants may reserve one 5-minute comment period each. More time may be available, depending on the number of people wishing to make oral comments and the time needed for questions following those comments. Reservations will be confirmed on a first-come, first-served basis. Written comments may also be submitted for the record at the meeting. All other attendees may register at the meeting. All comments not presented or submitted for the record at the meeting must be received by close of business Monday, March 23, 2009, to be considered. All comments and the official transcript of the meeting, when they become available, may be reviewed on the NSF Web page for six months. Participants who require a sign language interpreter or other special accommodations should contact Dr. Korsmo as directed above. A Spanish language interpreter will be present.

Background and Purpose

Section 7033 of the America Competes Act states the following:

(a) In General.—The Director is authorized to establish a new program to award grants on a competitive, merit-reviewed basis to Hispanic-serving institutions (as defined in section 502 of the Higher Education Act of 1965 (20 U.S.C. 1101a)) to enhance the quality of undergraduate science, technology, engineering, and mathematics education at such institutions and to increase the retention and graduation rates of students pursuing associate's or baccalaureate degrees in science, technology, engineering, and mathematics.

(b) Program Components.—Grants awarded under this section shall support—

(1) Activities to improve courses and curriculum in science, technology, engineering, and mathematics;

(2) Faculty development;

(3) Stipends for undergraduate students participating in research; and

(4) Other activities consistent with subsection (a), as determined by the Director.

(c) Instrumentation.—Funding for instrumentation is an allowed use of grants awarded under this section.

NSF is requesting stakeholder input on promising evidence-based practices that have enhanced the quality of undergraduate science, technology, engineering, and mathematics (STEM) education at Hispanic-serving institutions and increased the retention and graduation rates of Hispanic students pursuing associate or baccalaureate degrees in STEM. NSF is interested in learning more about successful partnership activities that have contributed to the increased participation and success of Hispanics in undergraduate STEM education. These might involve partnerships that include two-year and four-year institutions, state and local government organizations, K–12 institutions, private-sector firms, community groups, and other organizations involved in the science and technology enterprise. Research findings and experiential information are especially welcome; NSF would like to learn about strategies that have worked to increase Hispanic retention and graduation rates in STEM, as well as those strategies that have not proven effective.

Implementation Plans

NSF plans to consider the stakeholder input received at the meeting and in the written comments to develop the agency's programmatic response to Section 7033 of the America Competes Act.

Dated: January 27, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–2004 Filed 1–29–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 52–038; NRC–2008–0581]

Nine Mile Point 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC; Nine Mile Point 3 Nuclear Power Plant Combined License Application; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping

Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC have submitted an application for a combined license (COL) to build Unit 3 at its Nine Mile Point Nuclear Power Plant (NMPNPP) site, located on approximately 921 acres in Oswego County, New York on Lake Ontario, approximately five miles north-northeast of Oswego, New York. Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC submitted the application for the COL to the U.S. Nuclear Regulatory Commission (NRC) by letter dated September 30, 2008, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 52. A notice of receipt and availability of the application, including the Environmental Report (ER), was published in the **Federal Register** on Tuesday, October 28, 2008 (73 FR 63998). A notice of acceptance for docketing of the application for the COL was published in the **Federal Register** on December 19, 2008 (73 FR 77862). A notice of hearing and opportunity to petition for leave to intervene in the proceeding of the application will be published in a future **Federal Register** Notice. The purposes of this notice are (1) to inform the public that the NRC staff will be preparing an environmental impact statement (EIS) as part of the review of the application for the COL and (2) to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In addition, as outlined in 36 CFR 800.8(c), ''Coordination with the National Environmental Policy Act,'' the NRC staff plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) with steps taken to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA). Pursuant to 36 CFR 800.8(c), the NRC staff intends to use the process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth on 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.45 and 51.50, Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html* which provides access through the NRC's Electronic Reading Room (ERR) link. The accession number in ADAMS for the environmental report is ML083100609. 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 at 1–800–397–4209/301–415–4737 or by e-mail to pdr@nrc.gov. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-reactors/col/nine-mile-point.html*. In addition, both the Oswego Public Library at 120 East First Street, Oswego, New York and SUNY Oswego Penfield Library at 7060 State Route 104, Oswego, New York have agreed to make the ER available for public inspection.

The following key reference documents related to the application and the NRC staff's review processes are available through the NRC's Web site at *http://www.nrc.gov*:

a. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Function;

b. 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants;

c. 10 CFR Part 100, Reactor Site Criteria;

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants;

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process;

f. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations;

g. Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations;

h. Fact Sheet on Nuclear Power Plant Licensing Process;

i. Regulatory Guide 1.206, Combined License Applications for Nuclear Power Plants; and

j. Nuclear Regulatory Commission Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions.

The regulations, NUREG-series documents, regulatory guides, and the fact sheet can be found under Document Collections in the Electronic Reading Room on the NRC webpage. The environmental justice policy statement can be found in the **Federal Register**, 69 FR 52040, August 24, 2004.

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS as part of the review of the application for the COL at the Nine Mile Point 3 Nuclear Power Plant site. Possible alternatives to the proposed action (issuance of the COL for the Nine Mile Point 3 Nuclear Power Plant) include no action, reasonable alternative energy sources, and alternate sites. As set forth in 10 CFR 51.20(b)(2), issuance of a COL under 10 CFR Part 52 is an action that requires EIS. This notice is being published in accordance with NEPA and the NRC's regulations in 10 CFR Part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

a. Define the proposed action that is to be the subject of the EIS;

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Identify parties consulting with the NRC under the NHPA, as set forth in 36 CFR 800.8(c)(1)(i);

g. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

h. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

i. Describe how the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following persons or entities to participate in the scoping process:

a. The applicants, Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who intends to petition for leave to intervene in the proceeding, or who has submitted such a petition, or who is admitted as a party.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold two identical public scoping meetings for the EIS regarding the COL application. The scoping meetings will be held at SUNY-Oswego, Sheldon Hall, 7060 Route 104, Oswego, NY 13126 on Wednesday, February 25, 2009. The first meeting will convene at 1 p.m. and will continue until approximately 4 p.m. The second meeting will convene at 6 p.m., with a repetition of the overview portions of the first meeting, and will continue until approximately 9 p.m. The date of Thursday, February 26, 2009, is the alternative date for the scoping meeting in the event that SUNY-Oswego is closed on Wednesday, February 25, 2009, due to inclement weather. In the event that SUNY-Oswego is closed on both dates due to inclement weather the scoping meeting will be rescheduled and the meeting date and time will be published in the **Federal Register**. The determination to close the campus is made by the Governor of New York. Information on campus closure can be found on the following Web site: *http://www.oswego.edu/administration/public_affairs/emergency/snow/cancellations.html* under the subheading Campus Closing. The meetings will be transcribed and will include the following: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions for one hour prior to the start of each public meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below.

Persons may register to attend or present oral comments at the meeting on the scope of the NEPA review by contacting Mr. Philip Brandt or Ms. Jessie M. Muir by telephone at 1–800–368–5642, extension 3550 or 0491, or by e-mail to the NRC at *NMP3.COLEIS@nrc.gov* no later than February 18, 2009. Members of the public may also register to speak at the meeting prior to of the start of the session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Muir's attention no later than February 18, 2009, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the scope of the Nine Mile Point 3 Nuclear Power Plant COL environmental review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. To ensure that comments will be considered in the scoping process, written comments must be postmarked by March 31, 2009. Electronic comments may be sent by e-mail to the NRC at *NMP3.COLEIS@nrc.gov*. Electronic submissions must be sent no later than March 31, 2009. Comments will be made available electronically and will be accessible through the NRC's Electronic Reading Room link *http://www.nrc.gov/reading-rm/adams.html*. The NRC staff may, at its discretion, consider comments after the end of the comment period.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. A notice of hearing and opportunity to petition for leave intervene in the proceeding on the application for the COL will be published in a future **Federal Register** notice.

At the conclusion of the scoping process, the NRC staff will prepare a concise summary of the determinations, and conclusions reached on the scope of the environmental review including the significant issues identified, and will send this summary to each participant in the scoping process for whom the staff has an address. The staff will then prepare and issue for comment the draft EIS, which will be the subject of a separate **Federal Register** notice and a separate public meeting. Copies of the draft EIS will be available for public inspection at the PDR through the above-mentioned address and one copy per request will be provided free of charge. After receipt and consideration of comments on the draft EIS, the NRC will prepare a final EIS, which will also be available to the public.

Information about the proposed action, the EIS, and the scoping process may be obtained from Mr. Philip Brandt at U.S. Nuclear Regulatory Commission, Mail Stop T6–D32M, Washington, DC 20555–0001, by phone at 301–415–3550, or by e-mail at *Philip.Brandt@nrc.gov* and from Ms. Jessie M. Muir at 301–415–0491 or by e-mail at *Jessie.Muir@nrc.gov*.

Dated at Rockville, Maryland, this 26th day of January 2009.

For The Nuclear Regulatory Commission.

Andrew C. Campbell,

Acting Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E9–2050 Filed 1–29–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form SH—OMB Control No. 3235–0646—SEC File No. 270–585.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information

summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form SH (17 CFR 249.326T) is required to be submitted to the Commission by institutional investment managers subject to the existing Form 13F (17 CFR 249.325) filing requirements on the first business day of each week in which the institutional investment manager has entered into any new short positions or closed part or all of any short positions with respect to any Section 13(f) (15 U.S.C. 78m(f)) securities except for options. We estimate that 1,000 institutional investment managers subject to the Form 13F filing requirements will file Form SH to report the entry into short positions with respect to Section 13(f) securities. We estimate that each will file 36 Form SH reports during the nine-month period that Rule 10a–3T will be in effect. We further estimate that each of the 1,000 institutional investment managers will spend an average of 20 hours preparing each Form SH. Therefore the estimated total reporting burden associated with Form SH is 720,000 hours (1,000 respondents × 20 hours per form × 36 forms).

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

January 26, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2019 Filed 1–29–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Future Canada China Environment Inc.; Order of Suspension of Trading

January 28, 2009.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Future Canada China Environment Inc. Questions have arisen concerning recent trading activity in the company's stock during which its share price increased from $0.92 to $28.50. Questions have also arisen concerning the accuracy and adequacy of publicly available information regarding its potential acquisition of another company. Future Canada China Environment Inc., a company that has made public filings with the Commission, is quoted on the OTC Bulletin Board and Pink Sheets operated by Pink OTC Markets Inc. under the ticker symbol ''FCCE.''

The Commission is of the opinion that the public interest and the protection of the investors require a suspension of trading in securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, January 28, 2009, through 11:59 p.m. EST, on February 10, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–2159 Filed 1–28–09; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59292; File No. SR–BATS–2009–003]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 2.5, Entitled ''Restrictions,'' and BATS Rule 11.4, Entitled ''Authorized Traders.''

January 23, 2009.

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 January 16, 2009, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 2.5, entitled ''Restrictions,'' and BATS Rule 11.4, entitled ''Authorized Traders,'' to permit qualification and registration of Authorized Traders of Members pursuant to certain foreign examination modules equivalent to the Series 7 examination.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rules 2.5 and 11.4 both state that the Series 7 is required for registration with the Exchange as an Authorized Trader. The purpose of the proposed rule change is to expand the types of exams that may satisfy the Exchange's Series 7 requirement by recognizing foreign examination

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii)

modules equivalent to the Series 7 examination.

The proposal would reduce duplicative qualification standards that foreign registered representatives encounter to qualify as a U.S. general securities registered representative. For example, the examination modules for the U.K. (Series 17) and Canada (Series 37/38) currently are accepted as equivalent to the U.S. Series 7 by the NYSE, the Financial Industry Regulatory Authority (''FINRA''), the NASDAQ Stock Market, NYSE AlterNext US, NYSE Arca, and the Chicago Board Options Exchange (''CBOE'').[5]

The Series 17 version, the United Kingdom—Limited General Securities Registered Representative Examination, is for U.K. registrants who have successfully completed the basic exam of the U.K. and who are in good standing with the Financial Services Authority (''FSA''). Essentially, this modified Series 7 examination deletes those substantive sections of the standard Series 7 that overlap with the FSA examination. The Series 17 is a 100 question examination, is 120 minutes in duration, and deals with U.S. securities laws, regulations, sales practices and special products drawn from the standard Series 7 examination.

The Series 37 version is for Canadian registrants who have successfully completed the basic core module of the CSI Global Education (''CSI'', formerly the Canadian Securities Institute) program. The Series 38 version is for Canadian registrants who, in addition to having successfully completed the basic core module of the CSI program, have also successfully completed the Canadian option and futures program. Both the Series 37 and 38 share topics and test questions with the parent Series 7 program but cover only subject matter that is not covered, or not covered in sufficient detail, on the Canadian qualification examination. The Series 37 has 90 questions and is 150 minutes in duration, while the Series 38, an abbreviated version of the series 37, has only 45 questions and is 75 minutes in duration. Forty-five questions pertaining to options from the series 37 were omitted from the Series 38.

The Exchange wishes to give U.K. and Canadian registered representatives the same advantage they have at other exchanges by eliminating duplicative examinations. The Exchange believes that acceptance of these examinations will benefit both the Exchange and the foreign representatives affected by the proposal. Accordingly, pursuant to the amended rules, as proposed, the Exchange would approve the examination modules for the U.K. (Series 17) and Canada (Series 37/38) as equivalent foreign examination modules.[6] In addition, the rule changes as proposed will permit the Exchange to accept other foreign examination modules if, in the future, such modules are developed and approved by the Exchange as an equivalent foreign examination module.

2. Statutory Basis

The statutory basis for the Exchange's acceptance of these foreign examination modules lies in Section 6(c)(3)(B) of the Act.[7] Under that section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange Members. Pursuant to this statutory obligation, the Exchange has adopted examinations that are administered by other self-regulatory organizations to establish that Authorized Traders of Exchange Members have attained specified levels of competence and knowledge.

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] In particular, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by helping foreign representatives to qualify for registration with the Exchange by reducing duplicative qualification requirements. Accordingly, the modifications to BATS Rules 2.5 and 11.4 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement of 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 Regarding the Proposed Rule Changes Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the

[5] *See, e.g.,* Securities Exchange Act Release No. 27967 (May 1, 1990), 55 FR 19124 (May 8, 1990) (approving File No. SR–NYSE–89–22, Series 17); Securities Exchange Act Release No. 36629, International Series Release No. 909 (Dec. 21, 1995), 60 FR 67385, corrected, Securities Exchange Act Release No. 36629A, International Series Release No. 909A (Jan. 4, 1996), 61 FR 744 (Jan. 10, 1996) (approving File No. SR–NYSE–95–29, Series 37 and Series 38); Securities Exchange Act Release No. 36825 (Feb. 9, 1996), 61 FR 6052 (approving File No. SR–NASD–96–04, Series 37 and 38); Securities Exchange Act Release No. 38274 (February 12, 1997), 62 FR 7485 (approving File No. SR–CBOE–97–04, Series 17, 37 and 38); Securities Exchange Act Release No. 38921 (August 11, 1997), 62 FR 44023 (approving File No. SR–AMEX–97–26, Series 17, 37 and 38); *see also* NASD Rule 1032(a)(2)(B) and (C); NASDAQ Rule 1032(a)(2)(B) and (C).

[6] The Exchange notes that the U.K. (Series 17) and Canada (Series 37/38) represent foreign examination modules that allow persons in good standing with the securities regulators of their respective countries to qualify as general securities registered representatives (equivalent to Series 7 registrants) by successfully completing certain modified general securities representative examinations which were developed, along with others for other foreign jurisdictions, by the New York Stock Exchange (''NYSE'') more than 10 years ago.

[7] 15 U.S.C. 78f(c)(3)(B).

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78f(b)(5).

[10] U.S.C. 78s(b)(3)(A)(iii).

[11] CFR 240.19b–4(f)(6).

[12] U.S.C. 78s(b)(3)(A).

[13] CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] CFR 240.19b–4(f)(6).

[15] CFR 240.19b–4(f)(6)(iii).

Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will reduce duplicative qualification standards that foreign registered representatives encounter to qualify as a U.S. general securities registered representative. Additionally, the Commission notes that other self-regulatory organizations currently accept certain foreign examination modules as equivalent to the Series 7 examination as satisfactory proficiency examinations. Therefore, the Commission designates the proposal as operative upon filing.[16] 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–2009–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2009–003. 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 BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2009–003 and should be submitted on or before February 20, 2009.

For the Commission, by the Division of Trading & Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2020 Filed 1–29–09; 8:45 am]

BILLING CODE 8011–01–P

[16] 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).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59298; File No. SR–DTC–2008–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Provide The Options Clearing Corporation With Settlement Services for Stock Loan Transactions Entered Into Under the Market Loan Program

January 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 23, 2008, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is seeking to provide settlement services for stock loan transactions entered into under The Options Clearing Corporation's (''OCC'') proposed Market Loan Program.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC has approached DTC seeking DTC's settlement services for its proposed Market Loan Program in which OCC will act as a central counterparty for stock loan transactions. Under the proposal, OCC will submit stock loan deliver orders to DTC on a locked-in basis on behalf of the parties to the transactions. OCC will open a new account at DTC for this service.

Under OCC's proposed Market Loan Program, a stock loan is initiated when a lender is matched with a borrower through an electronic platform that supports securities lending and borrowing transactions by matching lenders and borrowers based on loan terms that each party is willing to accept. Once matched, the electronic platform will send details of the matched stock loan transaction to OCC. If the matched transaction passes OCC's validation process, OCC will create and send to DTC a pair of delivery orders, one message instructing DTC to transfer a specified number of shares of a specified eligible stock from the lending Participant to OCC's account and the

[1] 15 U.S.C. 78s(b)(1).

[2] OCC filed a proposed rule change (File No. SR–OCC–2008–20) with the Commission that is being approved simultaneously with this proposed rule change to describe proposed changes in its rules for purposes of establishing the Market Loan Program.

[3] The Commission has modified the text of the summaries prepared by DTC.

other message instructing DTC to transfer the same number of shares of the same stock with the same dollar value from OCC's account to the borrowing Participant's account. Each participant that elects to use the proposed Market Loan Program will authorize DTC by written agreement to accept instructions on its behalf from OCC, requesting that DTC debit or credit the Participant's DTC account with regard to said stock loan transactions.[4]

Since OCC's Market Loan Program is intended to be primarily an anonymous market, OCC will establish a new account at DTC for this activity.[5] The transfer of securities for value between the lender and the borrower will pass through the new OCC account in order to enable the stock loan transaction to be settled in a manner that provides anonymity to both the lender and borrower. In an effort to ensure that OCC's stock loan transactions complete, DTC is proposing to bypass the collateral monitor in OCC account.[6] This will advance transactions from the collateral recycle queue to the net debit cap recycle queue and will allow look-ahead to capture the transactions. DTC will also set the net debit cap[7] on OCC's account to zero so that all receives into the account recycle for net debit cap. A zero net debit cap will ensure that no receives are completed to OCC account unless an offsetting delivery is also completed.

In order to reduce the possibility of mismatched stock loans, DTC is proposing to amend its current look-ahead process for OCC stock loan transactions so that look-ahead matches on number of shares and dollar amount in addition to CUSIP. The existing Look-Ahead process finds delivery transactions that are pending because the receiving Participant has reached its net debit cap. It then looks to see whether the receiving Participant has a pending delivery for the same security to another Participant. In such a situation, DTC's Account Transaction Processor (''ATP'') will calculate the net effect to the collateral and net debit cap controls for all three Participants involved. If the net effect will not result in a deficit in the collateral or net debit cap controls for any of the three Participants, ATP processes the transactions simultaneously.

Additionally, DTC is proposing to block matched reclaims into OCC's account. Participants will be permitted to reclaim[8] to OCC's account, but reclaims under $15 million will not override OCC's debit cap and will recycle until OCC submits a redelivery back to the lender or until the reclaim drops at the recycle cutoff.[9] Under DTC's existing procedures, if the borrowing Participant reclaimed to OCC and the reclaim was less than $15 million, the reclaim would override the DTC Risk Management controls for OCC's account creating a debit in OCC's account. The debit would be eliminated if OCC entered a reclaim to the lending Participant.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder applicable to DTC because it should promote the prompt and accurate clearance and settlement of stock loan transactions which would settle through the Look-Ahead process and achieve a more efficient level of straight-through processing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission if it receives additional comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[11] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. The Commission finds that the approval of DTC's rule change is consistent with this section because it will allow DTC to provide to OCC settlement of stock loan transactions which will settle through the Look-Ahead process and will achieve a more efficient level of straight-through processing.

DTC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow DTC to implement the proposed rule change by the end of January 2009 when OCC plans to commence its proposed Market Loan Program in which OCC will act as a central counterparty for stock loan transactions.

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–DTC–2008–15 on the subject line.

[4] The debit or credit will depend on whether the Participant is the borrower or the lender in the stock loan transaction. DTC Participants that wish to use this service will also be required to acknowledge that reclaims to OCC under $15 million will not override OCC's net debit cap and will recycle until OCC submits a redelivery to the lender or until the reclaim drops at the recycle cutoff.

[5] A new Participant-level master file indicator will be used to signify that both Participants, the borrower and lender, have agreed to use the service.

[6] DTC's Account Transaction Processor (''ATP'') is the core processing system for all transaction activity affecting security positions held at DTC. It checks receiver's collateral before it checks for debit cap. If DTC did not bypass the collateral monitor then the deliveries into OCC account would pend for collateral first and would not be processed by look-ahead.

[7] Before completing a transaction in which a Participant is the receiver, DTC calculates the resulting effect the transaction would have on such Participant's account, and determines whether the resulting net balance would exceed the Participant's net debit cap. Any transaction that would cause the net settlement debit to exceed the net debit cap is placed on a pending (recycling) queue until another transaction creates credits in such Participant's account.

[8] A ''reclaim'' is an instruction to DTC to undo a delivery and is typically invoked in the event of an error where a Participant does not recognize the delivery.

[9] If OCC does not submit a redelivery to the lender, then the borrower's reclaim to OCC will drop at the recycle cutoff (*i.e.*, the borrower will retain the securities and the debit for the stock loan delivery it received from OCC). This is how DTC currently treats reclaims that are over $15 million.

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2008–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, 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 DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2008/dtc/2008–15.pdf*. 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–DTC–2008–15 and should be submitted on or before February 20, 2009.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–DTC–2008–15) be and hereby is approved.[13]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1983 Filed 1–29–09; 8:45 am]

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[12] 15 U.S.C. 78s(b)(2).

[13] 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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59287; File No. SR–ISE–2006–26]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Professional Account Holders

January 23, 2009.

I. Introduction

On May 5, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') 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] and Rule 19b–4 thereunder[2] to amend ISE rules to give certain non-broker-dealer orders, identified as ''professional orders,'' the priority given broker-dealer orders and market maker quotes rather than the priority currently given all public customer orders and to charge the same transaction fees for professional orders as charged for the orders of broker-dealers and market makers. On January 25, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 7, 2008.[3] The Commission received ten comment letters on the proposal.[4] The Exchange filed Amendment No. 2 to the proposed rule change on June 17, 2008,[5] and submitted a response to the SIFMA Letter on January 12, 2009.[6] This order provides notice of Amendment No. 2 and approves the proposal, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of ISE's Proposal

Currently, ISE grants certain advantages to Public Customer Orders[7] over Non-Customer Orders.[8] In particular, Public Customer Orders receive priority over Non-Customer Orders and market maker quotes at the same price. In addition, subject to certain exceptions, Public Customer Orders do not incur transaction charges.[9] The ISE states that the purpose, generally, of providing these marketplace advantages to Public Customer Orders is to attract retail investor order flow to the Exchange by leveling the playing field for retail investors over market professionals and providing competitive pricing.[10] According to the Exchange, market professionals have access to sophisticated trading systems that contain functionality not available to a retail customer, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously, and order and risk management tools.[11]

With respect to the marketplace advantages of priority in trading and waiver of fees, the Exchange does not believe at this time that the definitions of Public Customer and Non-Customer properly distinguish between the kind of non-professional retail investors for whom these advantages were intended and certain professionals. The Exchange believes that distinguishing solely between registered broker-dealers and non-broker-dealers with respect to these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57254 (February 1, 2008), 73 FR 7345 (February 7, 2008) (''Notice'').

[4] *See* letters from Abe Lampert, dated May 25, 2006 (''Lampert Letter''); Charles B. Cox III, dated May 26, 2006 (''Cox Letter I''); B. Thomas Rule, dated May 28, 2006 (''Rule Letter''); Bryan Weisberg, dated May 31, 2006 (''Weisberg Letter''); Andrea Schneider, dated June 18, 2006 (''A. Schneider Letter''); Gerald Schneider, dated February 6, 2008 (''G. Schneider Letter''); Andrew Carr, dated March 4, 2008 (''Carr Letter''); Charles B. Cox III, dated March 4, 2008 (''Cox Letter II''); Charles B. Cox III, dated April 16, 2008 (''Cox Letter III''); and Securities Industry and Financial Markets Association (''SIFMA''), dated July 23, 2008 (''SIFMA Letter'').

[5] In Amendment No. 2, ISE deleted proposed changes to ISE Rules 715 and 723 (d)(2). These revisions clarify that the proposed rule change would not limit a Public Customer's access to the Exchange's Price Improvement Mechanism (''PIM''). *See infra* note 75.

[6] *See* letter from Michael J. Simon, Secretary, ISE, to Florence Harmon, Acting Secretary, Commission, dated January 12, 2009 (''ISE Response Letter'').

[7] A ''Public Customer'' is defined in ISE's rules as ''a person that is not a broker or dealer in securities.'' A ''Public Customer Order'' is defined as ''an order for the account of a Public Customer.'' ISE Rules 100(a)(38) and (39).

[8] A ''Non-Customer'' is defined in ISE's rules as ''a person or entity that is a broker or dealer in securities.'' A ''Non-Customer Order'' is defined as ''any order that is not a Public Customer Order.'' ISE Rules 100(a)(27) and (28).

[9] For example, Public Customer Orders currently incur fees for certain transactions in ''Premium Products'' (defined in the ISE Schedule of Fees) and Complex Orders that take liquidity on the Exchange's complex order book. In addition, transaction fees are charged for Public Customer Orders entered in response to special order broadcasts, such as Facilitation orders, Solicitation orders, Block orders, and orders entered in the Exchange's PIM. Public Customer Orders also are subject to fees for order cancellations. *See* ISE Schedule of Fees.

[10] *See* Notice, *supra* note 3, at 73 FR 7346.

[11] *See* Notice, *supra* note 3, at 73 FR 7346 n.7.

advantages is no longer appropriate in today's marketplace, because some non-broker-dealer individuals and entities have access to information and technology that enables them to trade listed options in the same manner as a broker or dealer in securities. The Exchange maintains that these individual traders and entities (collectively, ''professional account holders'') have the same technological and informational advantages as broker-dealers trading for their own accounts, which enables professional account holders to compete effectively with broker-dealer orders and market maker quotes for execution opportunities in the ISE marketplace.[12] The Exchange therefore does not believe that it is consistent with fair competition for these professional accounts holders to continue to receive the same marketplace advantages that retail investors have over broker-dealers trading on the ISE.[13]

ISE thus proposes to create two new order types: Priority Customer Orders and Professional Orders. Priority Customer Orders would be orders for the account of a Priority Customer, which would be defined as a person or entity that is not a broker-dealer in securities and that does not place more than 390 orders [14] in listed options per day on average during a calendar month for its own beneficial account(s). Professional Orders would be defined as orders for the account of a person or entity that is not a Priority Customer, and would include proprietary orders of ISE members and non-member broker-dealers.[15] Priority Customer Orders would have priority over Professional Orders at the same price. Thus, Public Customers who now have priority over market makers and broker-dealers at the same price would be on parity with market markers and broker-dealers at the same price, if those Public Customers placed more than 390 orders in listed options per day on average during a calendar month. These Professional Orders also would be assessed the same fees that ISE charges for broker-dealer transactions.

The Exchange believes that the use of these new terms in the execution rules and fee schedule would result in professional account holders participating in the ISE's allocation process on equal terms with broker-dealer orders and market maker quotes. It would also result in members paying the same transaction fees for the execution of orders for a professional account as they do for broker-dealer orders. The Exchange believes that identifying professional account holders as participants who place more than one order per minute on average per day during a calendar month is an appropriately objective approach that would reasonably distinguish such persons and entities from retail investors. The Exchange proposes the threshold of 390 orders per day on average over a calendar month because it believes this amount far exceeds the number of orders that are entered by retail investors in a single day, while being a sufficiently low number of orders to cover the professional account holders that are competing with broker-dealers in the ISE marketplace. ISE further notes that basing the standard on the number of orders that are entered in listed options for a beneficial account(s) assures that professional account holders could not inappropriately avoid the purpose of the rule by spreading their trading activity over multiple exchanges, and using an average number over a calendar month would prevent gaming of the 390 order threshold.[16]

ISE's proposal would require Electronic Access Members (''EAMs'') to indicate whether Public Customer Orders are Priority Customer Orders or Professional Orders. EAMs would be required to review their customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker or dealer should be represented as Priority Customer Orders or Professional Orders. Members would be required to make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. If during a calendar quarter the Exchange identified a customer for which orders are being represented as Priority Customer Orders, but that customer has averaged more than 390 orders per day during a month, the Exchange would notify the member and the member would be required to change the manner in which it is representing the customer's orders within five days.[17]

All Public Customers would continue to be treated in the same manner under all ISE rules, other than those rules for priority and transaction fees. For example, ISE rules relating to the Intermarket Linkage affecting Public Customers [18] would continue to apply to all customers who are not broker-dealers—even those customers whose orders are identified as Professional Orders. Similarly, rules regarding customer suitability and other protections for customers would continue to apply with respect to all customers who are not broker-dealers.[19]

III. Commission Findings and Order Granting Accelerated Approval to the Proposed Rule Change as Modified by Amendment Nos. 1 and 2

After careful consideration of the proposed rule change, as well as the comment letters and the ISE Response Letter, the Commission finds that the proposed rule change is consistent with the Act. As the options markets have become more electronic and more competitive over the last several years, the Commission believes that the distinction between a professional who is registered as a broker-dealer and a public customer who is not so registered, but who may trade to the same extent as a broker-dealer, has become blurred.[20] Moreover, the

[12] The Exchange also maintains that, under its current rules, retail investors are prevented from fully benefiting from the priority advantage when professional account holders are afforded the same Public Customer Order priority that retail investors enjoy. *See* Notice, *supra* note 3, at 73 FR 7346.

[13] *Id.*

[14] The Exchange states that 390 orders is equal to the total number of orders that a person would place in a day if that person entered one order every minute from market open to market close. According to ISE, a study of one of the largest retail-oriented options brokerage firms indicated that on a typical trading day, options orders were entered with respect to each of 5,922 different customer accounts. There was only one order entered with respect to 3,765 of the 5,922 different customer accounts on this day, and there were only 17 customer accounts with respect to which more than 10 orders were entered. The highest number of orders entered with respect to any one account over the course of an entire week was 27. In addition, many of the largest retail-oriented electronic brokers offer lower commission rates to customers they define as ''active traders.'' The Exchange reviewed the publicly available information from the Web sites for Charles Schwab & Co., Inc.; Fidelity Investments; TD Ameritrade, Inc.; and optionsXpress, Inc., and found all of them define an ''active trader'' as someone who executes only a relatively small number of options trades per month. The highest required trading activity to qualify as an active trader among these four firms was 35 trades per quarter. *See* Notice, *supra* note 3, at 73 FR 7347 n.10–11.

[15] Members would be required to represent as Professional Orders for the next calendar quarter the orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter. *See* proposed Text of Regulatory Circular filed by ISE as part of the proposed rule change (''Proposed Regulatory Circular'').

[16] *See* Notice, *supra* note 3, at 73 FR 7346–47.

[17] *See* Proposed Regulatory Circular, supra note 15.

[18] *See* Chapter 19 of the ISE Rules.

[19] *See* Chapter 6 of the ISE Rules. Telephone conversation between Nancy Burke-Sanow, Assistant Director, Division of Trading and Markets (''Division''), Commission, *et al.,* and Katherine Simmons, Deputy General Counsel, ISE, on March 3, 2008.

[20] *See, e.g.,* Nina Mehta, Options Maker-Taker Markets Gain Steam, *TRADERSmagazine.com,* October 2007, *http://www.tradersmagazine.com/issues/20071004/2933–1.html.*

category of public customer today includes sophisticated algorithmic traders including former market makers and hedge funds that trade with a frequency resembling that of broker-dealers.[21] The Commission believes that the Act does not require the ISE to treat those customers who meet the high level of trading activity established in the proposal identically to customers who do not meet that threshold.[22]

Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)[23] of the Act and the rules thereunder,[24] and in particular with:

Section 6(b)(4) of the Act, which requires exchanges to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;[25]

Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[26] and

Section 6(b)(8) of the Act, which requires the rules of an exchange not to impose any burden on competition not necessary or appropriate in furtherance of the Act.[27]

In addition, the Commission finds that the proposed rule change is consistent with Section 11(a) of the Act.[28]

A. Customer Priority on the Options Exchanges

Currently, the ISE accords priority to all Public Customer Orders at the best bid or offer on the basis of price-time priority before allocating any remaining contracts among Non-Customer Orders and market maker quotes at the same best price. ISE now proposes that only Priority Customer Orders, as defined above, would receive such priority.

In considering this aspect of the proposal, the Commission examined the basis upon which exchanges have granted priority to public customers in the past. The Commission further considered the threshold question of when and whether the orders of public customers must be entitled to priority over the orders of broker-dealers.

In certain contexts, the Commission has characterized an exchange's practice of according priority to public customers' orders as a matter of ''tradition.''[29] Alternatively, the Commission has referred to public customer priority as ''the generally accepted auction trading principle of priority of public limit orders over member proprietary orders at the same price.''[30]

These references in Commission releases support the Commission's view that the customer priority rule under discussion was not a matter of public customer entitlement derived from the Act, but rather a matter of convention to accommodate public customer orders, or an auction principle applied as a matter of longstanding practice by exchanges. In addition, public customer orders are a source of liquidity in the market, and exchanges have sought to attract such orders by providing public customers certain guarantees that their orders would be executed even in the face of competition from broker-dealers.

The Commission previously has approved exchange rules that apply this ''traditional priority'' as consistent with the Act but, as discussed below, has approved exchange rules that do not accord priority to public customer orders.[31] In analyzing the concept of public customer priority, the Commission has considered whether public customer priority, or the absence of such priority, is consistent with Section 11(a) of the Act, the agency obligations of the specialist, the protection of investors and the public interest, and the Act, in general.

1. Section 11(a) of the Act

Section 11(a) of the Act prohibits any member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.[32] Thus, in some contexts, the Commission has cited Section 11(a) of the Act as a basis for exchange rules that accord customer orders priority, referring to ''the traditional auction market concepts of customer priority embodied in Section 11(a) of the Act.''[33]

Section 11(a)(1) contains a number of exceptions for principal transactions by members and their associated persons. One such exception, set forth in subparagraph (G) of Section 11(a)(1) and in Rule 11a1–1(T), permits any transaction for a member's own account provided, among other things, that the transaction yields priority, parity, and precedence to orders for the account of persons who are not members or associated with members of the exchange. Exchange rules, therefore, may require members to yield priority to the orders of public customers to satisfy this exception to Section 11(a). Another exception permits market makers to effect transactions on exchanges in which they are members.[34]

In addition to the exceptions noted above, Rule 11a2–2(T) under the Act[35] provides exchange members with an exception from the prohibitions in Section 11(a). Rule 11a2–2(T), known as the ''effect versus execute'' rule, permits an exchange member, subject to certain

[21] *Id.*

[22] The Commission notes that one of the commenters, discussing the proposed rule change before the Exchange filed Amendment No. 1, stated that she placed an average of 170 orders per day. *See* A. Schneider Letter *supra* note 4. Under the proposed rule change, as amended, a Public Customer that places this number of orders would be substantially short of the proposed threshold of more than 390 orders per day and thus would not be affected by the rule.

[23] 15 U.S.C. 78f(b).

[24] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also infra* notes 50–71 and accompanying text.

[25] 15 U.S.C. 78f(b)(4).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(8).

[28] 15 U.S.C. 78k(a). *See infra* Section III.A.1.

[29] *See, e.g.,* Securities Exchange Act Release Nos. 21695 (January 28, 1985), 50 FR 4823 (February 1, 1985) (in considering Chicago Board Options Exchange's (''CBOE'') proposal to implement a retail automatic execution system (''RAES'') pilot program, the Commission referred to ''the traditional priority accorded to public customer orders''); and 22610 (November 8, 1985), 50 FR 47480 (November 18, 1985) (in considering a proposal by the American Stock Exchange (''Amex'') to implement an automatic execution feature of its AUTOAMOS system on a pilot basis, the Commission stated that the pilot ''ensures the traditional priority accorded public customer orders''). In each of these instances, the Commission was referring specifically to public customer orders that are placed on the book. Such placements may affect the application of priority principles. *See, e.g.,* infra Section III.A.3.

[30] See, *e.g.,* Securities Exchange Act Release No. 22817 (January 21, 1986), 51 FR 3547 (January 28, 1986) (notice of CBOE's proposal to implement RAES on a permanent basis for options on the Standard and Poor's 100 Index (''OEX'') (SR–CBOE–85–32) and to extend RAES to selected classes of individual stock options on a six-month pilot basis (SR–CBOE–85–16) (''January 1986 Release''). *See also infra* note 40.

[31] *See infra* notes 41–44 and accompanying text.

[32] 15 U.S.C. 78k(a).

[33] *See, e.g.,* Securities Exchange Act Release No. 27205 (August 31, 1989), 54 FR 37180 (September 7, 1989) (Commission order approving a proposal of the Philadelphia Stock Exchange (''Phlx'') relating to the crossing of agency orders). *See also, e.g.,* Securities Exchange Act Release No. 33708 (March 3, 1994), 59 FR 11339 (March 10, 1994) (Commission order approving a proposal of the Midwest Stock Exchange, Inc. relating to agency crosses between the disseminated exchange market).

[34] Section 11(a)(1)(A).

[35] 17 CFR 240.11a2–2(T).

conditions, to effect transactions for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion (collectively, ''covered accounts'') by arranging for an unaffiliated member to execute the transactions on the exchange.

To comply with the ''effect versus execute'' rule's conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[36] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.[37]

The Commission previously has found that the manner of operation of ISE's Facilitation Mechanism enables Exchange members to meet the conditions of the effect versus execute rule and thereby avail themselves of the exception that the rule provides from the prohibitions of Section 11(a).[38] Similarly, the Commission believes that the manner of operation of ISE's overall electronic trading system, not only the Facilitation Mechanism, enables members to meet the four conditions of the effect versus execute rule and would continue to do so under the proposal.[39]

For this reason, the Commission believes that the proposed rule change, which would permit orders of ISE members to be executed under certain circumstances even if a Professional Order is on the ISE's book, is consistent with the requirements of Section 11(a) of the Act and Rule 11a2–2(T) thereunder.

2. Protecting Investors and the Public Interest

In analyzing the merits of exchange proposals affecting public customer order priority, the Commission has considered whether the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange, among other things, be designed ''to protect investors and the public interest.''[40]

The Commission does not believe that this provision of Section 6(b)(5) requires that ISE give priority to Public Customers whose orders would be considered Professional Orders under the proposal. The Commission has indicated in the past that it does not believe that priority for public customer orders is an essential attribute of an exchange. In particular, the Commission has approved options exchanges' trading rules that do not give priority to orders of public customers that are priced no better than the orders of other market participants.

For example, in approving proposed rules governing CBOE*direct,* CBOE's electronic screen-based trading system (''SBT''), the Commission concluded that it was consistent with the Act for the CBOE*direct* rules not to provide priority to public customer orders over market maker quotes and orders in all instances.[41] Significantly, the Commission noted in its approval order for the SBT rules that, in the rules governing trades on CBOE's floor, customer orders displayed on the limit order book are given priority over broker-dealer orders and market maker quotes, but distinguished the operation of CBOE*direct*. On the floor, the Commission noted, the priority of booked customer limit orders was essential because (at the time) the DPM was the agent for orders resting in the limit order book and, therefore, consistent with general agency law principles, CBOE's rules accorded priority to those resting limit orders.[42] In contrast, an SBT market maker was not required to act as agent with respect to a limit order entered into CBOE*direct.*

Furthermore, on the Boston Options Exchange (''BOX''), the options facility of the Boston Stock Exchange, Inc., orders generally are executed according to price-time priority, with no distinctions made with regard to account designation (Public Customer, Broker/Dealer or Market Maker).[43] On the options facility of NYSE Arca, Inc. (''NYSE Arca''), all non-marketable limit orders and quotes also are ranked in an electronic limit order file and matched for execution according to price-time priority.[44] On these exchanges, all options orders at the best price are executed based on the time the order was entered. In approving these

[36] The member, however, may participate in clearing and settling the transaction. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

[37] 17 CFR 240.11a2–2(T).

[38] *See, e.g.*, Securities Exchange Act Release No. 51666 (May 9, 2005), 70 FR 25631 (May 13, 2005).

[39] The Commission notes that, first, all orders are electronically submitted to the ISE through remote terminals. Second, because a member relinquishes control of its order after it is submitted to the system, the member does not receive special or unique trading advantages. Third, although the effect-versus-execute rule contemplates having an order executed by an exchange member who is not affiliated with the member initiating the order, the Commission recognizes that this requirement is satisfied when automated exchange facilities are used. (In considering the operation of automated execution systems operated by an exchange, the Commission has noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* Securities Exchange Act Release No. 15533 (January 29, 1979).) Finally, to the extent that ISE members rely on Rule 11a2–2(T) for a managed account transaction, they must comply with the limitations on compensation set forth in the rule. *See id.,* at note 20.

[40] For example, in January 1986, in publishing for public comment two proposed rule changes relating to the operation of RAES, *see supra* note 30, the Commission raised the question of whether the proposals were inconsistent with the provision in Section 6(b)(5) of the Act relating to the protection of investors and the public interest. The Commission also asked whether RAES was inconsistent with Section 11A of the Act, which states that it is in the public interest and appropriate for the protection of investors to assure ''economically efficient execution of securities transactions,'' ''the practicability of brokers executing investors' orders in the best market,'' and ''an opportunity * * * for investors' orders to be executed without the participation of a dealer.'' 15 U.S.C. 78k–1(a)(1)(C)(i), (iv) and (v). On August 1, 1986, the Commission approved the proposal to make the RAES pilot program in OEX options permanent and a modified version of the pilot proposal for RAES in equity options, concluding that the proposed rule changes were consistent with the requirements of the Act, and, in particular, with Sections 6 and 11A of the Act. *See* Securities Exchange Act Release No. 23490 (August 1, 1986), 51 FR 28788 (August 11, 1986). In its approval order, the Commission stated that it was ''cognizant of the substantial benefits provided by RAES to public customers of OEX and firms using the system'' and noted that RAES had increased the efficiencies of the OEX market and added to the confidence of public customers. The Commission indicated that it expected CBOE to modify RAES for OEX options in the future, although it stated that its approval of the rule change was not tied to this expectation. Noting the technical impediments to modifying the system for such options, the Commission expressed its belief that ''on balance, the benefits of RAES for the market in OEX weigh in favor of permanent approval.''

[41] CBOE had proposed alternative priority methodologies for its SBT system including public customer priority, market turner priority, and trade participation rights for Designated Primary Market Makers (''DPMs'') and Lead Market Makers. *See* Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (Commission order approving rules for CBOE*direct*).

[42] In 2005, the Commission approved a proposal by the CBOE to eliminate the requirement that DPMs act as the agent in the options in which it is registered as the DPM on the Exchange. *See* Securities Exchange Act Release No. 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (Commission order approving removing agency responsibilities of DPMs).

[43] The Commission stated that the ''contention that all existing options exchanges provide strict customer priority is an overstatement.'' The Commission noted that several options exchanges had rules to permit market makers to be on parity with customer orders in certain circumstances. *See* Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004).

[44] *See* Securities Exchange Act Release No. 54238, (July 28, 2006), 71 FR 44758 (August 7, 2006) (Commission order approving NYSE Arca's OX Trading Platform).

exchanges' rules, the Commission found them to be consistent with the Act.

The Commission believed that the BOX's and NYSE Arca's rules, which accord no priority to any public customer orders, are consistent with the Act's requirement that exchange rules be designed to protect investors and the public interest. [45] Similarly, the Commission believes that the ISE's proposal, which reasonably eliminates priority treatment of Professional Orders of Public Customers, is consistent with the statutory requirement.

3. Agency Obligations

In approving the proposed rule change, the Commission notes that, historically, exchange specialists have had substantial agency responsibilities in obtaining executions for customer limit orders. A specialist's responsibility to a customer in his or her role as agent for the limit order book was based on common law notions of fiduciary duty and incorporated in the rules of some exchanges. As exchanges increasingly have implemented automated trading systems, however, the specialist's role in handling limit orders has diminished.[46] On the ISE, market makers do not act as agent for incoming orders that are executable on the exchange. Orders submitted to the ISE are matched by an automated trading system and generally are not represented by a specialist acting as agent.[47]

The Commission's approval of ISE's proposal to no longer accord priority to Professional Orders is based solely on its determination that this proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission is making no determination as to whether the failure of any market participant (*e.g.*, a specialist managing an exchange's order book) to accord priority, as appropriate, to any order entrusted to that participant as an agent is consistent with the federal securities laws or any other applicable law. Accordingly, the Commission's approval of ISE's proposal does not affect fiduciary obligations under the federal securities laws or agency law principles.

B. Issues Raised by Commenters

As noted above, the Commission has received ten comment letters regarding the proposed rule change. [48] Nine of these commenters opposed the proposal. One commenter endorsed the ultimate goal of the proposal, but expressed concerns regarding its implementation.[49] The Commission acknowledges the arguments and concerns that have been raised by the commenters, but believes that the arguments and concerns do not support the conclusion that the proposal is inconsistent with the Act.

The commenters raise essentially five main issues: (1) That the proposal is anti-competitive; (2) that it unfairly discriminates against certain Public Customers who no longer would have priority over Non-Customers; (3) that it raises technical and operational issues for firms; (4) that it is vague and therefore unenforceable; and (5) that the imposition of transaction fees for the execution of Professional Orders is unfair. In its review of the proposal, the Commission has carefully considered these issues and has evaluated them in light of the Act's provisions, as discussed below.

1. ISE's Proposal Does Not Impose an Unnecessary or Inappropriate Burden on Competition

Some commenters believed that the proposed rule change would thwart competition by treating the orders of certain Public Customers on a par with orders of broker-dealers, despite the inability of those customers to participate in the market on an equal footing with broker-dealers and market makers.[50] These commenters argued that broker-dealers and market makers have substantial marketplace advantages over Public Customers, including lower margin and commission rates, better access to information, and superior technology,[51] and, in the case of market makers, the ability to stream quotes electronically on both sides of the market.[52]

As discussed above, the Act does not require that the order of a public customer or any other market participant be granted priority. The objective of promoting competition and the requirement that the rules of an exchange not impose an unnecessary or inappropriate burden upon competition do not necessarily mandate that a Professional Order be granted priority while the order of a broker-dealer should not be granted the same right.

As a general matter, in developing their trading and business models, exchanges have adopted rules, with Commission approval, that grant priority to certain participants over others, or to waive fees or provide discounts for certain kinds of transactions, in order to attract order flow or create more competitive markets.

The Act itself recognizes that the operation of a marketplace can warrant exceptions to general allocation principles, for example, by exempting specialists and market makers from the requirement that a member of an exchange yield to the order of a non-member.[53] ''Specialist entitlements'' [54] and facilitation and solicited order guarantees,[55] adopted by exchanges with Commission approval, also are instances in which the need to attract

[45] *Id.*

[46] On several options exchanges, including BOX and CBOE, the exchange market makers have no responsibility for executing book orders, do not receive any fees for execution of book orders, and, accordingly, have no agency responsibilities for book orders. *See e.g.*, BOX Rules, Chapter V and CBOE Rules Chapter VIII.

[47] The Commission recognizes that ISE's rules mandate that a Public Customer Order be represented by an agent in a discrete situation. ISE Rule 803(c) requires Primary Market Makers (''PMMs''), as soon as practical, to address Public Customer Orders that are not automatically executed because there is a displayed bid or offer on another exchange trading the same option contract that is better than the best bid or offer on the Exchange. In such cases, PMMs are required to execute at a price that matches the best price displayed on another exchange and/or send a Linkage Order. However, ISE Rule 803(c), which pertains to Intermarket Linkage, would not be affected by the proposed rule change. As noted above, ISE rules relating to the Intermarket Linkage affecting Public Customers would continue to apply to all Public Customers—even those customers whose orders are identified as Professional Orders. *See supra* note 18 and accompanying text.

[48] *See supra* note 4.

[49] *See* SIFMA Letter, *supra* note 4.

[50] *See, e.g.*, Cox Letter I *supra* note 4 and Weisberg Letter *supra* note 4.

[51] *See, e.g.*, Carr Letter *supra* note 4, G. Schneider Letter *supra* note 4 and Rule Letter *supra* note 4.

[52] *See, e.g.*, Carr Letter *supra* note 4, Cox Letter II *supra* note 4 and Rule Letter *supra* note 4.

[53] *See* Section 11(a) of the Act, 15 U.S.C. 78k(a), and the rules thereunder.

[54] A ''specialist entitlement'' as used here is an options exchange rule that under certain circumstances guarantees a specialist (or designated primary market maker) the right to trade ahead of other participants in the trading crowd with a certain percentage of every order—when the specialist is quoting at the best price—even when the specialist has not otherwise established priority. *See, e.g.*, ISE Rule 713, Supplementary Material .01(b); Amex Rule 935–ANTE(a)(5); CBOE Rule 8.87; NYSE Arca Rule 6.82(d)(2); Phlx Rule 1014(g)(ii).

[55] A ''facilitation guarantee'' as used here is an options exchange rule that under certain circumstances guarantees an order entry firm that has submitted a public customer order for execution on the exchange to trade with a certain percentage of that public customer order itself, ahead of other participants in the trading crowd that are prepared to trade at the same price. *See, e.g.*, ISE Rule 716(d); Amex Rule 950–ANTE, Commentary .02; CBOE Rule 6.74(b); NYSE Arca Rule 6.47(b); A ''solicited order guarantee'' is an options exchange rule that entitles a broker or firm that has solicited an order from a third party to trade against its customer's order to execute a certain percentage of the customer's order against the solicited order ahead of other participants in the trading crowd that are prepared to trade at the same price. *See, e.g.*, ISE Rule 716(e) (Solicited Order Mechanism).

order flow or provide incentives to one group of participants based on their role in the marketplace has been viewed as a valid reason to adjust the otherwise-established priority principles of an exchange. Other examples include options trading rules that adjust allocation principles under certain condition in the execution of larger orders [56] and the small order automatic execution systems created by options exchanges in the past.[57] Notably, in some prior proposals to waive or reduce customer fees, exchanges cited their need to remain competitive and attract order flow.[58]

The Commission believes that ISE's proposal to grant priority only to Priority Customers and no longer to waive fees for transactions involving Professional Orders likewise does not necessarily place an inappropriate burden on competition and should most reasonably be viewed as within the discretion of the Exchange,[59] so long as these changes do not unfairly discriminate among participants.[60] In fact, the ISE's proposal simply restores the treatment of Professional Orders to a base line where no special priority benefits and fee waivers are granted.

Moreover, with respect to commenters' contention that broker-dealers have substantial marketplace advantages over Public Customers, it should be noted that broker-dealers, unlike Public Customers, pay significant sums for registration and membership in self-regulatory organizations (''SROs''), and incur significant costs to comply, and ensure that their associated persons comply, with the Act and the rules thereunder and SRO rules. Moreover, Public Customers who would not be Priority Customers on ISE because they place options orders on the scale contemplated by the proposal could choose to become registered broker-dealers and receive the same advantages.

With regard to commenters' contentions relating to market-maker advantages, the Commission notes that ISE market makers have obligations that customers who seek to compete with them do not have, including the responsibility to make continuous markets; to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market; and not to make bids or offers or enter into transactions that are inconsistent with such a course of dealings.[61] Generally, the advantages of market makers noted by commenters, such as the ability to stream quotes on two sides of the market, are granted by exchanges as the *quid pro quo* for the market makers' assumption of these obligations, in addition to the application of other rules and restrictions relating to their activities.[62]

In addition, the proposal could provide an advantage to Public Customers who would not be Priority Customers. Under the proposed rule change, Professional Orders would not be subject to cancellation fees,[63] which could result in partially reduced costs for those customers who place orders on an average of one order per minute and frequently cancel such orders.[64]

Several commenters stated that active traders provide valuable liquidity to the market and pose significant competition to market makers. According to some commenters, the proposed rule change would punish these customers who contribute liquidity,[65] and would force such traders from the market.[66]

The Commission acknowledges that Public Customers, including sophisticated algorithmic traders, provide valuable liquidity to the options markets and compete with market makers. In the Commission's view, however, the contribution of these participants to the market does not mean that their orders are entitled to favorable priority and fee treatment, even if—as commenters argue—they would not be able to supply this liquidity without being granted such priority and fee advantages. Market makers and broker-dealers also provide valuable liquidity to the marketplace and do not have priority. Thus, the Commission believes that it is consistent with the Act for the ISE to amend its rules so that Professional Orders, like the orders of broker-dealers and market makers, are not granted special priority.

Two commenters appeared to acknowledge that customers who enter orders on the scale that the proposed rule change would establish likely have

[56] *See, e.g.*, CBOE Rule 6.74(f) (Open Outcry SizeQuote Mechanism).

[57] In the past, options exchanges that generally operated on an open-outcry trading model adopted systems that automatically executed orders of public customers below a certain size without exposing them to the auction on the floor. These systems were designed to give investors speed, efficiency, and accuracy in the execution of their small orders, which were executed at the exchange's disseminated quotation on a rotational basis against the accounts of participating market makers. Auto-ex orders were thus not executed according to auction principles and priority rules, but were allocated to market makers on the system by turn, regardless of who was first to bid or offer the disseminated price. For descriptions of such systems, *see, e.g.*, Securities Exchange Act Release Nos. 48975 (December 23, 2003), 68 FR 75667 (December 31, 2003) (Amex); 44829 (September 21, 2001), 66 FR 49730 (September 28, 2001) (Phlx); 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) (Pacific Exchange); and 44104 (March 26, 2001), 66 FR 18127 (April 5, 2001) (CBOE).

[58] *See, e.g.*, Securities Exchange Act Release Nos. 50469 (September 29, 2004), 69 FR 59628 (October 5, 2004) (CBOE reduction of public customer transaction fees on options on ETFs and HOLDRs); 49957 (July 1, 2004), 69 FR 41318 (July 8, 2004) (ISE waiver of surcharge on public customer transactions in certain licensed products); 44654 (August 3, 2001), 66 FR 42574 (August 13, 2001) (CBOE waiver of fees for public customer transactions in options on Standard & Poor's 100 European-style index). *See also infra,* note 101.

[59] The Commission previously has articulated its position regarding its application of Section 6 of the Act in evaluating distinctions among market participants proposed by exchanges and the leeway granted to an exchange to set an appropriate level of advantages and responsibilities of persons in its marketplace. *See* Securities Exchange Act Release No. 50484 (October 1, 2004), 69 FR 60440 (October 8, 2004), stating, *inter alia:*

[Section (b)(5)] sets forth the purposes or objectives that the rules of a national securities exchange should be designed to achieve. Those purposes or objectives, which take the form of positive goals, such as to protect investors and the public interest, or prohibitions, such as to not permit unfair discrimination among customers, issuers, brokers or dealers or to not permit any unnecessary or inappropriate burden on competition, are stated as broad and elastic concepts. They afford the Commission considerable discretion to use its judgment and knowledge in determining whether a proposed rule change complies with the requirements of the Act. Furthermore, the subsections of Section 6(b) of the Act must be read with reference to one another and to other applicable provisions of the Act and the rules thereunder. Within this framework, the Commission must weigh and balance the proposed rule change, assess the views and arguments of commenters, and make predictive judgments about the consequences of approving the proposed rule. (citations omitted)

[60] *See infra* Section III.B.2 for a discussion of whether ISE's proposal is unfairly discriminatory.

[61] *See* ISE Rule 803.

[62] For example, pursuant to ISE Rule 803(b), a market maker on ISE has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for the market maker's own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular options contract, or a temporary distortion of the price relationships between options contracts of the same class. Public Customers, including customers who seek to compete with market makers, have no such obligations. Under ISE's proposal, Public Customers who submit Professional Orders would not be subject to market maker obligations.

[63] The Exchange charges a cancellation fee, currently $2.00 per cancellation, on each clearing EAM that cancels at least 500 Public Customer orders in a month for itself or for an introducing broker, for each cancelled order in excess of the total number of orders executed for itself or for such introducing broker that month. The cancellation fee does not apply to the cancellation of Public Customer Orders that improve ISE's disseminated quote at the time the orders were entered. There currently are no fees for the cancellation of Non-Customer Orders, and Professional Orders would not incur such fees under the proposed rule change.

[64] The Commission notes that, contrary to the apparent belief of some commenters, the proposal would not impose cancellation fees on Professional Orders. *See* Cox Letter II *supra* note 4 and Carr Letter *supra* note 4.

[65] *See, e.g.*, A. Schneider Letter *supra* note 4 and Weisberg Letter *supra* note 4.

[66] *See, e.g.*, Lampert Letter *supra* note 4.

information and technology that allows them to compete in a sophisticated manner.[67] However, they argued that the proposal's creation of the category of Professional Orders suggests that ''any person who wishes to consider themselves a retail customer [must] forego any type of trading technology, which of course is widely available in today's market.* * *''[68]

The Commission disagrees with this contention. The proposed rule does not ask Public Customers to forego technology and does not limit the technology that Public Customers who would not be Priority Customers can use to access the ISE's marketplace. Rather, it establishes that customers who place orders at the level proposed by the ISE—irrespective of their use of trading technology—are engaged in a course of active trading that need not be accorded the special deference paid to those customers who do not place orders as frequently.

In support of its proposal, the ISE contends that traders who place orders on the scale set forth in the proposal have the same technological and informational advantages over retail investors as broker-dealers trading for their own account—which enables them to compete effectively with broker-dealer orders and market maker quotes for execution opportunities in the ISE marketplace.[69] The Commission, however, does not believe that access to or use of sophisticated technology is the key issue in considering whether it is consistent with the Act for ISE to treat Professional Orders in the same manner as broker-dealer orders in specified circumstances. Instead, the Commission believes that the pivotal issue is whether, under the Act, the exchange can grant certain advantages, which it initially established for all public customers, to only those public customers who place no more than 390 orders per day.

The Commission notes that currently customers who are positioned to place orders in the number and frequency specified in the proposed rule change are treated on a par with customers who may not have this ability, or even if they have this ability, do not place orders on the average of one order per minute per over the trading day. Under the Exchange's proposal, customers who place orders less frequently would be advantaged by the Exchange's grant of priority over Non-Customer Orders and market maker quotes at the same price, even if they have access to sophisticated options trading technology. Further, the Commission disagrees with the argument that customers would have to forego using trading technology under the Exchange's proposal. The ISE's proposal does not limit, prohibit, or proscribe the type of technology any customer uses. Customers could still use sophisticated technology to trade options and their orders would not be considered Professional Orders, as long as those customers placed fewer than one order per minute per day on average during a calendar month for their own beneficial account(s).

One commenter believed that the proposed rule change limited competition and was collusive because ''it requires the cooperation of other competing exchanges. * * *''[70] The Commission notes, however, that the proposed rule change requires EAMs to conduct a quarterly review of customer activity only as reflected in the EAM's own records. The proposal does not require either EAMs or the Exchange to seek information from other broker-dealer firms or exchanges regarding a customer's activity.[71]

2. ISE's Proposal Is Not Unfairly Discriminatory

Many of the commenters argued that the proposed rule change is unfairly discriminatory against those Public Customers who would not be Priority Customers by denying them priority rights and imposing transaction fees on their orders.[72] In the ISE's view, public customers today range from individuals who infrequently place options orders to sophisticated algorithmic traders that trade many options classes on a daily basis.[73] ISE proposes to continue to grant priority to, and waive transaction fees for, individuals who place orders below the threshold, as a means to encourage their participation. The Exchange believes, however, that priority rights and fee waivers are no longer warranted for market participants who place more than one order per minute on average during a calendar month, a level of activity that it believes is akin to that of broker-dealers. The Exchange therefore proposes to refrain from providing priority and fee incentives for such participants.

The Commission notes that the Act does not require that the Exchange's rules be designed to prohibit all discrimination, but rather they must not permit unfair discrimination.[74] With regard to public customer priority, the Commission has noted above ample precedent demonstrating that public customer orders are not entitled *per se* to priority treatment over the orders of other market participants. The Commission similarly believes that the ISE's proposal to grant such priority treatment only to Priority Customers is consistent with the Act and, in particular, is not unfairly discriminatory.

As discussed above, the Commission does not believe that the current rules of ISE and other exchanges that accord priority to all public customers over broker-dealers and market makers are unfairly discriminatory. Nor does the Commission believe that it is unfairly discriminatory to accord priority to only those customers who on average do not place more than one order per minute as ISE proposes.

Because, as discussed in Section III.A.1. above, the Commission believes that ISE's proposal is consistent with the Act in that it does not impose an undue burden on competition, the Commission believes that a grant of such priority is an exchange's prerogative and within the exchange's business judgment. As such, a decision to grant priority—which, after all, is a special benefit—to the orders of one type of customer (for example, a retail customer) and not to the orders of another (for example, an institutional investor) may be an economic decision that an exchange may make to provide some customers with incentives and fee waivers. In the Commission's view, nothing in the Act requires an exchange to provide the same incentives and discounts to all market participants equally, as long as the exchange does not unfairly discriminate among participants with regard to access to exchange systems.[75]

[67] *See, e.g.*, Carr Letter *supra* note 4 and Cox Letter II *supra* note 4.

[68] *See* Carr Letter *supra* note 4. The commenter believed that the proposal, as a result, would require retail customers who forego technology to ''wander into the marketplace blind and helpless.''

[69] *See* Notice, *supra* note 3, at 73 FR 7346.

[70] *See* Cox Letter III *supra* note 4. The commenter stated further: '' * * * I fail to see how the ISE can request trading information from a person or entity trading from another exchange, particularly when other exchanges have business models that promote order entry: the exact behavior the ISE is attempting to punish with its rule.''

[71] Confirmed in telephone conversation between Ira Brandriss, Special Counsel, Division, Commission, and Katherine Simmons, Deputy General Counsel, ISE, on April 29, 2008. *See also supra* note 17 and accompanying text. *See also* ISE Rules 401, 706, and 712.

[72] *See, e.g.*, G. Schneider Letter *supra* note 4, Lampert Letter *supra* note 4, Rule Letter *supra* note 4, Cox Letter II *supra* note 4 and Cox Letter III *supra* note 4.

[73] *See* Notice, *supra* note 3, at 73 FR 7346.

[74] 15 U.S.C. 78f(b)(5). *See also* Securities Exchange Act Release No. 50484, *supra* note 59.

[75] In this regard, the Commission notes that ISE amended the proposal to remove the changes it had originally proposed to ISE Rules 715 and 723(c), which would have prevented access by all Public Customers to the Exchange's PIM. *See* Amendment No. 2, *supra* note 5.

The Commission believes that the line that the ISE seeks to draw between Priority Customers and Public Customers whose orders would be treated as Professional Orders most simply reflects a belief—from the point of view of operating a marketplace—that the orders of a person who submits, on average, more than one order every minute of the trading day need not (or should not) be granted the same benefit or incentive that is granted to Public Customers who do not utilize the marketplace on such a scale.

The same can be said with regard to relief from transaction fees. Exchanges can and do have fee structures that vary depending on the market participant.[76] Various fee structures are permitted provided that they are consistent with the Act (including the requirement that the fees not be unfairly discriminatory). Such differing fee structures are based on the judgment of those responsible for the financial operation of the exchange, and are tied to exchange assumptions about market participant behavior, the impact of incentives and discounts, and other factors relating to the specific business model adopted by the exchange. A decision to waive or discount fees for orders of one kind of participant and not another, based on the extent of their participation in the market, is a reasonable decision for an exchange, provided it is otherwise consistent with the Act.[77]

3. The Proposal Can Be Implemented on a Technical and Operational Level

One commenter, SIFMA, endorsed the underlying goal of the proposed rule change, but expressed concern about various aspects of the proposal. First, SIFMA was concerned that, under the proposed rule, EAMs would ''have no ability to identify the end-user customer and count orders.'' [78] SIFMA's comment letter noted that EAMs would have to rely on the broker-dealers that route orders to them and have the customer relationship to identify the professional customer and code orders correctly. Moreover, SIFMA stated that, in general, firms do not count the number of orders directed by customers under the same beneficial owners and do not have the ability to break down, by beneficial owner, the number of orders placed. SIFMA further believed that EAMs would need to rely on the Options Clearing Corporation (''OCC'') member firm that ultimately clears the professional customer to identify such accounts. SIFMA stated, however, that such reliance would not be possible because OCC member clearing firms see only the number of cleared contracts at the end of the day, and not the number of executions. Moreover, SIFMA noted the lack of access by clearing firms to information regarding a customer's cancellations, replacements, modifications, or corrections of orders, and the resulting inability of such firms to accurately determine the number of orders a customer has placed.[79]

In its response, ISE stated that these concerns were based on the erroneous assumption that compliance with the proposal would require analysis by an ISE member's clearing firm of cleared data provided by the OCC to determine whether a customer had crossed the threshold of placing more than 390 orders per day, on average, over the course of a calendar month.[80] ISE clarified that only broker-dealers that received orders from the ultimate customers—not clearing firms—would be required under the proposal to monitor the number of orders they receive from each such customer and to mark the orders correctly. ''These types of activities are routinely performed by broker-dealers who deal directly with customers,'' the ISE maintained, adding that broker-dealers have a regulatory responsibility to know their customer, ''and, in fact, do know if they have customers that conduct this high level of activity.'' [81]

With regard to ISE members that submit customer orders to the Exchange when those orders were routed to them by other, non-ISE-member broker-dealers, SIFMA indicated its concern that such members ''will be forced to rely on the good faith and effort of its broker-dealer client * * * to identify the professional customer and code the order correctly.'' [82] In response, the ISE noted that the Exchange and all other options exchanges currently have a variety of order marking requirements for which ISE members that route orders on behalf of other broker-dealers have regulatory responsibility. The ISE further noted that its EAMs would need to have reasonable procedures in place to confirm that their broker-dealer customers had implemented the appropriate procedures to monitor their customers' trading activity in a way that would enable them to code orders properly to comply with the proposal.[83]

The Commission believes that the ISE's response clarifies its proposal and addresses the concerns raised by SIFMA regarding the counting and marking of customer orders. The proposal would require any ISE member submitting a Public Customer Order to the ISE to identify such order as either a Priority Customer Order or a Professional Customer Order. Based on the ISE's representations, the Commission believes that ISE members that directly submit their Public Customers' orders to the Exchange for execution can readily determine the number of orders that their customers place and can mark those orders accordingly. The Commission notes that the Exchange has stated that EAMs would need to have reasonable procedures in place to confirm that their broker-dealer customers have instituted policies and procedures to enable them to monitor their customers' trading activity in a

[76] For example, some exchanges impose different fees for different market participants, depending on whether the market participant adds liquidity by posting a quote or order, or takes liquidity by executing against a quote or order that is already posted on the exchange. Some exchanges' transaction fees, before additional charges are assessed, are identical for market makers and member firms, while on other exchanges market makers and member firms are charged at different rates. Some exchanges provide volume discounts; some place a cap on charges to particular participants. Some impose transaction fees upon certain participants for complex orders; others do not. As a result, the fees imposed upon various market participants can vary significantly from exchange to exchange. Each exchange's schedule of fees is available on the exchange's Web site. *See e.g.*, the fee schedule of CBOE at *http://www.cboe.com/AboutCBOE/FeeSchedule.aspx*; the fee schedule of BOX at *http://www.bostonoptions.com/box_regulations/PDF/feeschedjan06.pdf*; and the fee schedule of NYSE Arca at *http://www.nyse.com/futuresoptions/nysearcaoptions/1147128317287.html*.

[77] Similar to other exchanges, ISE charges different fees depending on whether an individual is a Public Customer, Non-Member Broker-Dealer, EAM, ISE Market Maker or Non-ISE Market Maker. For example, ISE charges Public Customers a $0.05 fee for Non-Premium Products and the $0.03 Comparison Fee for the orders of Public Customers are currently waived while Non-Member Broker-Dealers and EAMs pay a $0.15 fee for orders in Premium and Non-Premium Products (subject to volume discounts) and a $0.03 Comparison Fee. Comparatively, ISE market makers are subject to a fee for transactions in Premium and Non-Premium Products between $0.12–$0.21 (subject to volume discounts). The amount of this fee is based on the average daily volume of transactions on the Exchange, and is currently $0.13 per contract. *See* ISE Schedule of Fees. *See also* discussion infra note 105.

[78] *See* SIFMA Letter *supra* note 4.

[79] *Id.*

[80] *See* ISE Response Letter *supra* note 6.

[81] *Id.* The ISE also stated that it consulted with a variety of firms that accept orders directly from customers, and that these firms did not believe it would be difficult for them to determine, on a quarterly look-back basis, whether a customer had on average entered more than 390 orders per day during any month. *Id.*

[82] *See* SIFMA Letter *supra* note 4.

[83] *Id.* According to the Exchange, an EAM would be required to have such procedures in place to comply with its obligation under ISE Rule 712(a) to properly mark orders. Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE, and Nancy J. Burke-Sanow, Assistant Director, Division, Commission, on December 15, 2008.

way that would allow them to mark their customer orders properly.[84]

The Commission believes that ISE members, as well as non-member broker-dealers who accept customer orders and route them to EAMs for execution on the Exchange, have the ability to ascertain for each customer account, by beneficial owner, the number of orders placed by a customer. As the ISE points out, the proposal requires the broker-dealer that has a relationship with, and knows, the ultimate customer to monitor the number of orders it is entering on the customer's behalf and to conduct a quarterly review to assure that the firm is marking the orders appropriately. This monitoring is accomplished by the ISE member directly in the case of its own customers or by the ISE member contractually requiring that its broker-dealer customers have reasonable procedures in place to ascertain whether their customers are submitting orders that should be marked as Professional Orders.

Second, SIFMA expressed concern that professional customers could '' 'game' the system and inappropriately take advantage and avoid the purpose of the rule.'' SIFMA noted the frequent use by Professional Customers of multiple firms for execution and clearing purposes, which would limit the review by any one EAM or OCC clearing member of a customer's activity. SIFMA further noted that customers could electronically route orders to an exchange without a Professional Order designation and, due to linkage and best execution requirements, these orders could be sent to the ISE without the proper coding.[85] ISE acknowledged that customers could place orders at multiple firms, such that each individual broker-dealer would not know the full extent of its customer's trading activity, making it impossible for a particular firm to measure the total number of orders entered by a particular customer through multiple firms. ISE stated, however, that it believed that ''it might be impractical for a customer to conduct professional trading activities through multiple broker-dealer platforms.'' The Exchange also stated that it would conduct surveillance designed to identify any such behavior, and that if it does detect such activity, it would alert the relevant ISE members. In addition, ISE agreed that, through the operation of the options linkage rules, an order for the account of a customer that ISE otherwise would consider a Professional Order might be routed to other exchanges that do not have the same order designation and ultimately receive the price available on the ISE indirectly.[86] The Commission believes that the rule change, as proposed, meets the Exchange's aim with regard to those customers who do not employ such stratagems, and thus the potential for a customer to circumvent the proposed rule, does not, in this instance, make it inconsistent with the Act.

Third, SIFMA believed that, for the proposed rule change to be properly implemented, customer trading information would need to be disseminated across desks within a single firm that typically are separated by information barriers. Regarding this issue, SIFMA requested specific guidance on how to implement the proposed requirements without violating applicable privacy regulations.[87] ISE responded that putting procedures in place to comply with its proposal would not result in disclosure of information about particular orders entered by a customer either pre- or post-trade, nor would it result in disclosures about any positions held by a customer. The Exchange stated that it is not aware of any information barrier rule or privacy regulations that would prevent a firm from marking an order as required under the proposal.[88] The Commission agrees with the ISE's position in this regard. The Commission believes that the determination of whether a Public Customer's orders are categorized as Priority Customer Orders or Professional Orders, which would be based on information compiled retrospectively each quarter, can be made at a level in the firm that is ''above'' the information barrier, and in any case does not require disclosure of any particular orders placed by a customer or any positions held by a customer.

Finally, one commenter expressed the concern that the proposal would be burdensome because it would require EAMs to purchase expensive technology to track the number of orders a person entered per day.[89] Another commenter, SIFMA, believed that the ISE's proposal would require broker-dealers to expend significant resources to comply with the rule and potentially would present large retail firms with difficulties in implementing a new order origin code within the proposal's timeframe.[90]

ISE acknowledged that systems changes to accommodate new coding of orders could be required for some broker-dealers, but did not believe that such systems changes would be particularly costly ''relative to other rule changes routinely made by the ISE and other exchanges.'' [91] SIFMA also expressed a concern that the proposal could require significant revisions to the customer option account agreements used by firms, because customers could be designated as professional customers.[92] The Commission believes that it is within the business judgment of the Exchange to accept orders for execution in its marketplace contingent upon their submission with a particular order marking, even when that marking may require additional expense on the part of member firms. Exchanges routinely add new order types [93] and the ISE's proposal is no different in this regard. Thus, the Commission believes that the new order designations in the proposed rule change are consistent with the Act, even though they will require members to incur costs associated with systems changes and customer account agreements may need to be revised to reflect these new order designations. As a general matter, the Commission notes that membership in an exchange comes with the expectation that rule changes will be made by the exchange that could require member firms to make adjustments in their systems and procedures.

SIFMA further noted that the proposal would require additional systemic and procedural enhancements for firms to track the new fees that would be established under the proposal.[94] In response, the Exchange maintained that fees vary widely among exchanges and are changed frequently, and that firms routinely make changes in their systems to accommodate exchange fee changes.[95] The Commission notes that fee changes are commonly introduced by exchanges, and members can expect that they will need to adjust their tracking systems as needed when changes are made.

Finally, SIFMA further expressed a concern that the five-day timeframe allotted at the end of a quarter for firms to start coding for Priority Customer and Professional Orders is unrealistic.[96] In response, the ISE acknowledged that it may take more than five days for a

[84] *Id.*

[85] *See* SIFMA Letter *supra* note 4.

[86] *See* ISE Response Letter *supra* note 6.

[87] *See* SIFMA Letter *supra* note 4.

[88] *See* ISE Response Letter *supra* note 6.

[89] *See* Cox Letter III *supra* note 4.

[90] *See* SIFMA Letter, *supra* note 4.

[91] *See* ISE Response Letter *supra* note 6.

[92] *See* SIFMA Letter *supra* note 4.

[93] *See, e.g.*, Securities Exchange Act Release Nos. 58546 (September 15, 2008), 73 FR 54440 (September 19, 2008); 57441 (March 6, 2008), 73 FR 13267 (March 20, 2008); and 56072 (July 13, 2007), 72 FR 39867 (July 20, 2007).

[94] *See* SIFMA Letter *supra* note 4.

[95] *See* ISE Response Letter *supra* note 6.

[96] *See* SIFMA Letter *supra* note 4.

broker-dealer to make the system changes necessary to accommodate the new order code, and stated that it would give members at least one full quarter, following Commission approval of the proposal to make these changes. The Exchange stated, however, that once the initial systems changes were implemented, five days would be sufficient to change the order code associated with a particular customer account.[97] The Commission notes that the Exchange has committed to working with its members to assure that there is adequate time to make the initial systems changes necessary to implement the new coding,[98] and believes that not less than one full quarter is a reasonable amount of time to achieve this aim. The Commission, however, will monitor whether any issues may arise that would require the ISE to postpone the proposal's implementation timeframe.

4. ISE's Proposal Is Not Vague

One commenter contended that the proposal was vague and unenforceable.[99] The Commission believes that the ISE's proposed rule change is amply clear regarding the kind of order that would not receive priority at the same price and would incur transaction fees as a result of the proposal. The proposal sets forth specific and objective numeric thresholds in its provisions, defining ''Priority Customer'' as ''a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).'' It further defines the term ''Professional Order'' as ''an order that is for the account of a person or entity that is not a Priority Customer.'' The Commission believes that these definitions are clear and provide notice of the parameters of the rule.

5. Transaction Fees for Professional Orders Are Not Inequitable

As noted above, Section 6(b)(4) of the Act requires that the rules of an exchange must provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In evaluating whether a proposed fee can be considered an equitable allocation of a reasonable fee, the Commission considers all of the relevant factors including, among others, the amount of the fee and whether the fee is an increase or decrease, the classes of persons subject to the fee, the basis for any distinctions in classes of persons subject to the fee, the potential impact on competition, and the impact of any disparate treatment on the goals of the Act.[100]

Under the proposed rule change, transaction fees would be charged for the execution of certain Public Customer Orders that currently are not subject to such fees. The Commission notes, however, that options exchanges have charged transaction fees for the execution of public customer orders in the past,[101] and in many cases continue to do so when necessary to defray the costs of maintaining a market and associated expenses for a particular product or category of products.[102] The ISE itself currently imposes fees on certain Public Customer Orders.[103]

Moreover, Public Customer Orders that today incur no transaction fees on the ISE are not indefinitely excepted from such fees. The Exchange's Fee Schedule specifically sets forth transaction fees for customer orders, while indicating that these fees (other than fees for ''Premium Products'') currently are waived.[104] The Commission notes that different market participants pay fees based on their status on the Exchange (*e.g.*, Public Customer, non-member broker-dealer, EAM, non-ISE market maker and ISE market maker).[105] Under the proposal, customers whose orders are identified as Professional Orders would pay the same fees as non-member broker-dealers.

The Commission notes that the customers who enter more than 390 orders per day on average during a calendar month are using the Exchange's facilities to place approximately 8,000 orders, on average one order for every minute of every trading day, over the course of the month and nearly 100,000 orders per year. The Commission believes that it is consistent with the Act for ISE to allocate to customers who participate in the market at this level of activity—

[97] *See* ISE Response Letter *supra* note 6.

[98] The Exchange stated that it would work with its members to assure that there is adequate time to implement systems changes as necessary. ISE Response Letter, *supra* note 6, n.6. The Exchange further advised that it would issue a notice to its members informing them of the implementation date of the proposed rule change. Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE, and Nancy J. Burke-Sanow, Assistant Director, Division, Commission, on December 15, 2008.

[99] *See* Cox Letter III, *supra* note 4.

[100] *See, e.g.*, Securities Exchange Act Release No. 50484 (October 1, 2004), 69 FR 60440 (October 8, 2004).

[101] Subsequently, however, some exchanges have rescinded transaction fees for manually executed equity options orders for public customers. *See, e.g.*, Securities Exchange Act Release Nos. 42798 (May 18, 2000), 65 FR 34239 (May 26, 2000); and 43343 (September 26, 2000), 65 FR 59243 (October 4, 2000).

[102] For example, the exchanges generally charge transaction fees for executions of public customer orders in index options. *See, e.g.*, Securities Exchange Act Release No. 52983 (December 20, 2005), 70 FR 76475 (December 27, 2005) (Commission notice of filing and immediate effectiveness of a proposed rule change adopting a flat execution fee for Public Customer Orders in premium products).

[103] As noted at *supra* note 9, Public Customer Orders incur fees for certain transactions in Premium Products and Complex Orders, orders entered in response to special order broadcasts, and orders entered in PIM. Public Customer Orders also are subject to fees for cancellation.

[104] *See* Securities Exchange Act Release Nos. 42370 (April 28, 2000), 65 FR 26256 (May 5, 2000) (Commission order adopting original ISE Fee Schedule), in which the Commission found that the fee schedule was ''not unreasonable'' and ''should not discriminate unfairly among market participants.'' *See also* the current ISE Fee Schedule, dated August 12, 2008 and Securities Exchange Act Release No. 58139 (July 10, 2008), 73 FR 41142 (July 17, 2008) (customer fees, except those for ''Premium Products,'' currently waived until June 30, 2009).

[105] *Public Customers*—The $0.05 fee for Non-Premium Products and the $0.03 Comparison Fee for the orders of Public Customers are currently waived. Public Customers currently pay a fee of $0.15 for certain orders in Premium Products and Complex Orders, orders entered in response to special order broadcasts and orders entered in PIM. Public Customers are also subject to an order cancellation fee of $1.75 per order. *See supra* notes 9 and 64.

Non-member Broker-Dealers—Non-member broker-dealers pay a $0.15 fee for orders in Premium and Non-Premium Products (subject to volume discounts) and a $0.03 Comparison Fee. Customers whose orders are identified as Professional Orders would incur these fees under the proposal.

EAMs—EAMs pay the same fees for orders as non-member broker-dealers. In addition to non-member broker-dealer fees, EAMs also pay a one time application fee of $3500, a regulatory fee of $5000 per year and a monthly access fee of $500.

ISE Market Makers—ISE market makers are subject to a fee for transactions in Premium and Non-Premium Products between $0.12–$0.21 (subject to volume discounts). The amount of this fee is based on the average daily volume of transactions on the Exchange, and is currently $0.13 per contract. *See* Fee Notice to ISE Members dated March 3, 2008, available at *http://www.iseoptions.com*. In addition, ISE market makers pay a $0.03 Comparison Fee, a fee for payment for order flow (only for customer orders) of $0.65 per contract and $0.10 per contract for options on issues that are participating in the Penny Pilot (subject to available rebates).

In addition to these market maker fees, PMMs and Competitive Market Makers (''CMMs'') pay additional fees including, but not limited to, the fees described below. PMMs have a minimum monthly transaction fee of $50,000, a one time application fee of $7500, a regulatory fee of $7500 per year, a monthly access fee of $4000 and an inactivity fee of $100,000 per month. CMMs have a one time application fee of $5500, a regulatory fee of $5000 per year, a monthly access fee of $2000 and an inactivity fee of $5,000 per month.

Non-ISE Market Makers—Non-ISE market makers pay a $0.37 fee for transactions in Premium and Non-Premium Products (subject to volume discounts) except for a $0.16 fee for orders entered in the Facilitation and Solicitation Mechanisms and a $0.03 Comparison Fee.

which enables them to compete with Non-Customers who are registered broker-dealers—the same transaction fees that it charges to such Non-Customers.

C. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

Pursuant to Section 19(b)(2) of the Act,[106] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**.[107] The Commission notes that the proposal, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 7, 2008. The revisions made to the proposal in Amendment No. 2 deleted proposed changes to ISE Rules 715 and ISE Rule 723(d)(2). These revisions appropriately clarify that the proposed rule change would not limit a Public Customer's access to the Exchange's PIM. Accordingly, pursuant to Section 19(b)(2) of the Act,[108] the Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, 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–2006–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–26 and should be submitted on or before February 20, 2009.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[109] that the proposed rule change (SR–ISE–2006–26), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1979 Filed 1–29–09; 8:45 am]

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[106] 15 U.S.C. 78s(b)(2).

[107] *See supra* note 3.

[108] 15 U.S.C. 78s(b)(2).

[109] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59288; File No. SR–ISE–2009–03]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

January 23, 2009.

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 January 15, 2009, 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 4 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

[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.

to establish fees for transactions in options on the Short QQQ ProShares (''PSQ''),[4] the Short S&P500 ProShares (''SH''),[5] the UltraShort Lehman 20+ Year Treasury ProShares (''TBT''),[6] and the PowerShares DB U.S. Dollar Bearish Fund (''UDN'').[7] The Exchange represents that PSQ, SH, TBT and UDN 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 PSQ, SH, TBT and UDN.[8] The amount of the execution fee for products covered by this filing shall be $0.18 per contract for all Public Customer Orders[9] 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.[10] Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be $0.45 per contract.[11] Further, since options on PSQ, SH, TBT and UDN are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

(b) *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] 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[14] and Rule 19b–4(f)(2)[15] 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2009–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2009–03. This file number should be included on the subject line

[4] ''NASDAQ–100 Index'' is a trademark of the NASDAQ Stock Markets, Inc. (''NASDAQ'') and has been licensed for use for certain purposes by ProShares Trust. All other trademarks and service marks are the property of their respective owners. The Short QQQ ProShares (''PSQ'') is not sponsored, endorsed, sold or promoted by NASDAQ. NASDAQ 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 PSQ 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 PSQ or with making disclosures concerning options on PSQ under any applicable federal or state laws, rules or regulations. NASDAQ does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

[5] ''Standard & Poor's,'' ''S&P,'' ''S&P 500,'' ''Standard & Poor's 500,'' ''500'' are trademarks of The McGraw-Hill Companies, Inc. (''McGraw-Hill'') and have been licensed for use for certain purposes by ProShares Trust. All other trademarks and service marks are the property of their respective owners. The Short S&P500 ProShares (''SH'') is not sponsored, endorsed, sold or promoted by Standard & Poor's, (''S&P''), a division of McGraw-Hill. S&P 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 SH 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 SH or with making disclosures concerning options on SH under any applicable federal or state laws, rules or regulations. S&P does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

[6] ''Lehman Brothers'' and ''Lehman Brothers Inc.'' are trademarks of Lehman Brothers Inc. (''Lehman'') and have been licensed for use for certain purposes by ProShares Trust. All other trademarks and service marks are the property of their respective owners. The UltraShort Lehman 20+ Year Treasury ProShares (''TBT'') is not sponsored, endorsed, sold or promoted by Lehman. Lehman 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 TBT 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 TBT or with making disclosures concerning options on TBT under any applicable federal or state laws, rules or regulations. Lehman does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

[7] The PowerShares DB U.S. Dollar Bearish Fund (''UDN'') is based on the Deutsche Bank Short U.S. Dollar Index (USDX®) Futures Index™ (''DB Short USD Futures Index''). The sponsor of the DB Short USD Futures Index is Deutsche Bank AG, London (''DB AG''). UDN is managed by DB Commodity Services LLC. U.S. Dollar Index® and USDX® are registered service marks of IntercontinentalExchange, Inc. PowerShares® is a registered service mark of PowerShares Capital Management LLC (''PowerShares''). UDN is not sponsored, endorsed, sold or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in UDN. Neither DB AG nor PowerShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on UDN 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 UDN or with making disclosures concerning options on UDN under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[8] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.24 per contract side and $0.15 per contract side, respectively. *See* Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR–ISE–2008–52).

[9] 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.

[10] 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.

[11] 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.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2009–03 and should be submitted on or before February 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2061 Filed 1–29–09; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59283; File No. SR–Phlx–2009–01]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Margin Requirements for Foreign Currency Options

January 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on January 15, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''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 substantially prepared by the Exchange. Phlx has filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act[5] and Rule 19b–4 thereunder,[6] proposes to amend Phlx Rule 721, Proper and Adequate Margin, to add margin requirements for U.S. dollar-settled foreign currency options (''FCOs'').[7]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add margin requirements for U.S. dollar-settled FCOs (''FCO margin requirements'' or ''FCO margin'') in Phlx Rule 721(c).

The FCO margin requirements proposed are substantially similar to prior Commentary .16 to Phlx Rule 722, which was removed in a recent filing to simplify Phlx's margin rules.[8] The FCO margin requirements are also substantially similar to current ISE Rule 1202(d).

Accordingly, under proposed Phlx Rule 721(c), the Exchange will calculate the margin requirement for customers that assume short FCO positions by adding a percentage of the current market value of the underlying foreign currency contract to the option premium price less an adjustment for the out-of-the-money amount of the option contract. On a quarterly calendar basis, the Exchange will review five-day price changes over the preceding three-year period for each underlying currency and set the add-on percentage at a level which would have covered those price changes at least 97.5% of the time (the ''confidence level'').

If the results of subsequent reviews show that the current margin level provides a confidence level below 97%, the Exchange will increase the margin requirement for that individual currency up to a 98% confidence level. If the confidence level is between 97% and 97.5%, the margin level will remain the same but will be subject to monthly follow-up reviews until the confidence level exceeds 97.5% for two consecutive months. If, during the course of the monthly follow-up reviews, the confidence level drops below 97%, the margin level will be increased to a 98% level and if it exceeds 97.5% for two consecutive months, the currency will be taken off monthly reviews and will be put back on the quarterly review cycle. If the currency exceeds 98.5%, the margin level will be reduced to a 98% confidence level during the most recent 3 year period.

Finally, in order to account for large price movements outside the established margin level, if the quarterly review shows that the currency had a price movement, either positive or negative, greater than two times the margin level during the most recent 3 year period, the margin requirement will be set at a level to meet a 99% confidence level (''Extreme Outlier Test'').[9] These parameters are identical to prior Commentary .16 to Phlx Rule 722.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] FCOs are currently traded on the Exchange under the name World Currency Options.

[8] *See* Exchange Act Release No. 58340 (August 11, 2008), 73 FR 48268 (August 18, 2008) (SR–Phlx–2007–33). Pursuant to this filing, Rule 721 was amended to add subsection (b) requiring Exchange members to make an election to be bound by either CBOE or NYSE margin rules, and Phlx Rule 722 was shortened.

[9] The Exchange will inform its members and the public of the margin levels for each currency option immediately following the quarterly reviews described in Rule 721(c).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposal is consistent with these obligations because clarification of the Exchange's FCO margin rules should benefit investors and traders and be in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing 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 the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[14] Phlx requests that the Commission waive the 30-day operative delay. The proposed rule change is substantially similar to an ISE rule relating to margin for foreign currency options.[15] The Commission believes that this proposed rule change does not raise any new, unique or substantive issues from those raised in the approved ISE filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Phlx to apply FCO margin rules that are similar to those of other options exchanges.[16] Therefore, the Commission designates the proposal operative upon filing.

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–Phlx–2009–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2009–01 and should be submitted on or before February 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1978 Filed 1–29–09; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] Exchange Act. Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[16] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–59290; File No. SR–NYSE–2009–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Introduce a Pilot Program for NYSE Trades

January 23, 2009.

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 January 16, 2009, the New York Stock Exchange, LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. NYSE has designated the proposed rule change as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a pilot program to introduce its NYSE Trades service at no charge. NYSE Trades is a new NYSE-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that NYSE reports to the Consolidated Tape Association (''CTA'') for inclusion in CTA's consolidated data stream and certain other related data elements (''NYSE Last Sale Information'').

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

a. *The Service.* The Exchange proposes to establish a pilot program to introduce NYSE Trades, a new service pursuant to which it will allow vendors, broker-dealers and others (''NYSE-Only Vendors'') to make available NYSE Last Sale Information on a real-time basis.[4] The Exchange will not impose any fees for the receipt and use of NYSE Trades, whether on vendors or subscribers, during the pilot period.

Contemporaneously with the proposed rule change, the Exchange submitted a proposed rule change that seeks to establish a $1500 per month access fee for the receipt and redistribution of the NYSE Trades datafeed(s) and a $15 per month device fee for the end-use of NYSE Trades' NYSE Last Sale Information (the ''NYSE Trades Fee Filing''). The Exchange would not commence to impose those fees until the later of Commission approval of the NYSE Trades Fee Filing and the end of the pilot period.

NYSE Last Sale Information would include last sale information for all securities that are traded on the Exchange. Currently, the Exchange trades only Network A Securities.

The Exchange will make NYSE Last Sale Information available through its new NYSE Trades service at the same time as it provides last sale information to the processor under the CTA Plan. In addition to the information that the Exchange provides to CTA, NYSE Last Sale Information will also include a unique sequence number that the Exchange assigns to each trade and that allows an investor to track the context of the trade through such other Exchange market data products as NYSE OpenBook® and NYSE Info Tools®.

The Exchange developed NYSE Trades primarily at the request of traders who are very latency sensitive. The latency difference between accessing last sales through the NYSE datafeed or through the CTA datafeed can be measured in tens of milliseconds. The Exchange anticipates that demand for the product will derive primarily from investors and broker-dealers who desire to use NYSE Trades to power certain trading algorithms or smart order routers. The free access to NYSE Trades during the pilot period will enable investors to determine whether NYSE Trades provides value to their business models and will enable the Exchange to make the service available during the time required to obtain approval for the fees.

b. *Administrative Requirements.* During the pilot period, the Exchange will require NYSE-Only Vendors to enter into the form of ''vendor'' agreement into which the CTA Plan requires recipients of the Network A last sale prices information datafeeds to enter (the ''Network A Vendor Form''). The Network A Vendor Form will authorize the NYSE-Only Vendor to provide the NYSE Trades service to its subscribers and customers.

The Network A Participants drafted the Network A Vendor Form as a one-size-fits-all form to capture most categories of market data dissemination. It is sufficiently generic to accommodate NYSE Trades. The Network A Vendor Form has been in use in substantially the same form since 1990.[5]

Similarly, the Exchange will require professional and non-professional subscribers to NYSE Trades to undertake to comply with the same contract, reporting, payment, and other administrative requirements as to which the Network A Participants subject them in respect of Network A last sale information under the CTA Plan.

c. *Duration of Pilot Program.* The Exchange proposes to commence the pilot program shortly after submitting the proposed rule change to the Commission. The Exchange proposes to conduct the pilot test for 90 days from its commencement date.

If, at the end of the pilot period, the Commission has not yet acted on the NYSE Trades Fee Filing, the Exchange will assess its experience with NYSE Trades and determine whether to extend or modify the pilot program.

2. Statutory Basis

The bases under the Act for the proposed rule change are the requirements under Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The pilot program would benefit investors by providing a free alternative to the last sale price information that they receive under the CTA Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

The Exchange has discussed the pilot program with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Last Sale Information service by becoming NYSE-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and the proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Exchange notes that it will make the NYSE Last Sale Information available to vendors no earlier than it makes its last sale information available to the processor under the CTA Plan.

[5] *See* Release Nos. 34–28407 (September 10, 1990), and 34–49185 (February 4, 2004).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [8] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay [10] is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to immediately provide additional information to investors at no cost. Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–05 and should be submitted on or before February 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1981 Filed 1–29–09; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59299; File No. SR–NYSE–2009–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Temporarily Lower Its Average Global Market Capitalization Continued Listing Standard

January 27, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2009, New York Stock Exchange, LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to lower temporarily from $25 million to $15 million the average market capitalization required of listed companies under Section 802.01B of the Exchange's Listed Company Manual (the ''Manual''). This temporary reduction will apply through April 22, 2009. The text of the proposed rule change is available on the Exchange's Web site *(http://www.nyse.com),* at the Exchange's Office of the Secretary 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 NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 802.01B of the Manual provides that the Exchange will promptly delist any company (including limited partnerships and real estate investment trusts (''REITs'')) if it is determined that the company has an average global market capitalization over a consecutive 30 trading-day period of less than $25 million, regardless of the original listing standard under which it listed. A company is not eligible to utilize the cure procedures set forth in Sections 802.02 and 802.03 with respect to this criterion and instead is immediately subject to the Exchange's delisting procedures set forth in Section 804 of the Manual. Through April 22, 2009, this provision will apply only to companies (including limited partnerships and REITs) whose average global market capitalization over a consecutive 30 trading-day period falls below $15 million.[3] Companies that fall below the $25 million market capitalization requirement but not below the $15 million level will benefit from this modified requirement to the extent that they are not otherwise subject to suspension under the Exchange's other continued listing criteria.[4] All of the Exchange's other continued listing criteria will continue to apply during this period and companies that meet the modified average global market capitalization requirement during this period may be deemed to be below compliance or delisted for falling below other quantitative standards or pursuant to the ''Other Criteria'' set forth in Section 802.01D.

In the past several months, the U.S. and global equities markets have experienced extreme volatility and a precipitous decline in trading prices of many securities. The Commission has acknowledged in several recent emergency Orders that these unusual market conditions threaten the fair and orderly functioning of the securities markets and can lead to a crisis of confidence among investors regarding the viability of companies whose stock prices have declined significantly.[5] As a consequence of this market crisis, the number of companies listed on the Exchange whose average global market capitalization has fallen below $25 million over a 30 trading-day period has been significantly higher than the historical norm. The Exchange believes that, in many cases, these companies have experienced precipitous stock price declines not due to company-specific issues, but because of the general decline in investor confidence and other unusual circumstances affecting the broad market. Consequently, the Exchange believes that many of these companies may remain suitable for continued listing and that their market capitalizations may well return to prior levels once the current market turbulence passes.

The Exchange believes that temporarily lowering the 30 trading-day average global market capitalization requirement from $25 million to $15 million will facilitate the retention, during this period of market turbulence, of companies whose size and quality makes them suitable for continued listing on the NYSE. The proposed modified requirement will enable these companies to remain listed in the current difficult market conditions with the prospect of a future recovery in their stock prices enabling them to comply with the $25 million market capitalization requirement upon its reinstatement. The Exchange has chosen to temporarily lower this listing standard rather than to impose a complete moratorium on application of the standard, because it continues to believe that, even at this time, companies whose market capitalization deteriorates to a level below $15 million are not suitable for continued listing on the Exchange.

The Exchange notes that it adopted its $25 million average global market capitalization requirement as recently as 2004—at a time when stock prices and the overall market were far higher than they are currently—and that the requirement prior to that date was $15 million.[6] Consequently, the Exchange has recent experience with the continued listing of companies whose average global market capitalization exceeds $15 million but is lower than $25 million, and is comfortable allowing these companies to continue to be listed on the Exchange for a temporary period. The Exchange notes that, unlike with the Exchange's other quantitative listing standards, Section 802.01B does not provide companies with any period of time to take steps to attempt to regain compliance with the standard. The Exchange believes that temporarily lowering the level at which a company's average global market capitalization subjects it to automatic delisting is appropriate in light of the extreme volatility in companies' stock prices in the current market and the absence of any cure provisions in the rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[7] of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act[8] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

[3] Any company whose consecutive 30 trading-day average global market capitalization has fallen below $15 million prior to the date of submission of this filing will continue to be subject to delisting. Any company whose 30 consecutive trading-day average global market capitalization falls below $15 million at any time after the submission of this filing will be subject to delisting, including if that 30 trading-day period includes trading days prior to the submission of this filing. For example, a company whose 30 consecutive trading-day average global market capitalization falls below $15 million 10 days after submission of this filing (so that a portion of that 30 trading-day period preceded and a portion of the period followed submission of this filing) will be subject to delisting.

[4] Section 804 of the Manual provides that a request for review of a delisting determination will ordinarily stay the suspension of the subject security pending the review, but the Exchange staff may immediately suspend from trading any security pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade. The lowered $15 million standard will be applied to any company for which the Exchange has not yet announced a suspension of trading pending delisting by the date of this filing, including any company whose suspension under the $25 million standard had been stayed pending appeal which is trading on the Exchange pending the outcome of the appeal process. Such companies will benefit from the lowered standard, assuming they are and remain above the requisite $15 million average market cap. If the sole basis for delisting in such a case is the company's noncompliance with the $25 million market capitalization requirement, NYSE Regulation will inform the company in writing that it is withdrawing its delisting determination and that the company's appeal is now moot. As noted above, any such company remains subject to suspension and delisting under the Exchange's other continued listing standards.

[5] *See, e.g.,* Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) (''The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.'').

[6] *See* Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (SR–NYSE–2003–43).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to remove uncertainty regarding the ability of certain companies to remain listed on the NYSE during the current highly unusual market conditions, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the 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 [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the NYSE to immediately implement a temporary measure to lower its continued listing requirement relating to average global market capitalization to respond to recent market volatility and conditions. The Commission notes that the Exchange's current standard does not provide companies with a period of time to regain compliance and, instead, companies failing to meet this standard are immediately subject to the Exchange's delisting procedures in Section 804 of the Manual. As such, the Commission believes that waiving the 30-day operative delay will provide certain companies with immediate relief from being delisted as a result of the current market conditions, provided that their average global market capitalization over a consecutive 30-day trading period remains at $15 million or above. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.[13]

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, 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–06. 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 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–NYSE–2009–06 and should be submitted on or before February 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2016 Filed 1–29–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 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. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59289; File No. SR–NYSEArca–2009–06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Introduce a Pilot Program for NYSE Arca Trades

January 23, 2009.

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 January 21, 2009, NYSE Arca, Inc. (''NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Arca. NYSE Arca has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to establish a pilot program to introduce its NYSE Arca Trades service at no charge. NYSE Arca Trades is a new NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that NYSE Arca reports to the Consolidated Tape Association (''CTA'') for inclusion in CTA's consolidated data stream and certain other related data elements (''NYSE Arca Last Sale Information'').

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

a. *The Service.* The Exchange proposes to establish a pilot program to introduce NYSE Arca Trades, a new service pursuant to which it will allow vendors, broker-dealers and others (''NYSE Arca-Only Vendors'') to make available NYSE Arca Last Sale Information on a real-time basis.[4] The Exchange will not impose any fees for the receipt and use of NYSE Arca Trades, whether on vendors or subscribers, during the pilot period.

Contemporaneously with the proposed rule change, the Exchange submitted a proposed rule change that seeks to establish a $750 per month access fee for the receipt and redistribution of the NYSE Arca Trades datafeed(s) and device fees for the end-use of NYSE Arca Trades' NYSE Arca Last Sale Information (the ''NYSE Arca Trades Fee Filing'') as follows:

i. $5 per month per display device for the receipt and use of NYSE Arca Last Sale Information relating to Network A and Network B Eligible Securities (as the CTA Plan uses those terms); and

ii. $5 per month per display device for the receipt and use of NYSE Arca Last Sale Information relating to securities listed on Nasdaq.

The Exchange would not commence to impose those fees until the later of Commission approval of the NYSE Arca Trades Fee Filing and the end of the pilot period.

NYSE Arca Last Sale Information would include last sale information for all securities that are traded on the Exchange.

The Exchange will make NYSE Arca Last Sale Information available through its new NYSE Arca Trades service at the same time as it provides last sale information to the processor under the CTA Plan. In addition to the information that the Exchange provides to CTA, NYSE Arca Last Sale Information will also include a unique sequence number that the Exchange assigns to each trade and that allows an investor to track the context of the trade through such other Exchange market data products as ArcaBook®.

The Exchange developed NYSE Arca Trades primarily at the request of traders who are very latency sensitive. The latency difference between accessing last sales through the NYSE Arca datafeed or through the CTA datafeed can be measured in tens of milliseconds. The Exchange anticipates that demand for the product will derive primarily from investors and broker-dealers who desire to use NYSE Arca Trades to power certain trading algorithms or smart order routers. The free access to NYSE Arca Trades during the pilot period will enable investors to determine whether NYSE Arca Trades provides value to their business models and will enable the Exchange to make the service available during the time required to obtain approval for the fees.

b. *Administrative Requirements.* During the pilot period, the Exchange will require NYSE Arca-Only Vendors to enter into the form of ''vendor'' agreement into which the CTA Plan requires recipients of the Network A last sale prices information datafeeds to enter (the ''Network A Vendor Form''). The Network A Vendor Form will authorize the NYSE Arca-Only Vendor to provide the NYSE Arca Trades service to its subscribers and customers.

The Network A Participants drafted the Network A Vendor Form as a one-size-fits-all form to capture most categories of market data dissemination. It is sufficiently generic to accommodate NYSE Arca Trades. The Network A Vendor Form has been in use in substantially the same form since 1990.[5]

Similarly, the Exchange will require professional and non-professional subscribers to NYSE Arca Trades to undertake to comply with the same contract, reporting, payment, and other administrative requirements as to which the Network A Participants subject them in respect of Network A last sale information under the CTA Plan.

c. *Duration of Pilot Program.* The Exchange proposes to commence the pilot program shortly after submitting the proposed rule change to the Commission. The Exchange proposes to conduct the pilot test for 90 days from its commencement date.

If, at the end of the pilot period, the Commission has not yet acted on the NYSE Arca Trades Fee Filing, the Exchange will assess its experience with NYSE Arca Trades and determine whether to extend or modify the pilot program.

2. Statutory Basis

The bases under the Act for the proposed rule change are the requirements under Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The pilot program would benefit investors by providing a free alternative to the last sale price information that they receive under the CTA Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Exchange notes that it will make the NYSE Arca Last Sale Information available to vendors no earlier than it makes its last sale information available to the processor under the CTA Plan.

[5] *See* Release Nos. 34–28407 (September 10, 1990), and 34–49185 (February 4, 2004).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has discussed the pilot program with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Arca Last Sale Information service by becoming NYSE Arca-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and the proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [8] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca requests that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay [10] is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to immediately provide additional information to investors at no cost. Therefore, the Commission designates the proposal operative upon filing.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Arca has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEArca–2009–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2009–06 and should be submitted on or before February 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1980 Filed 1–29–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59293; File No. SR–OCC–2008–19]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 1506

January 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 31, 2008, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act [2] and Rule 19b–4(f)(1) [3] thereunder so that the proposal was 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 proposed rule change clarifies the text of Rule 1506, which prohibits deposits in lieu of margin for certain options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s–1(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to make a technical correction to Rule 1506 which prohibits deposits in lieu of margin in respect of certain options, including binary options. The proposed rule change amends Rule 1506 to prohibit deposits in lieu of margin in respect of range options. In a previous rule change, OCC made technical modifications to Rule 1506 but inadvertently omitted references to range options in the rule text.[5] The proposed rule change corrects that omission.

The proposed change is consistent with Section 17A of the Act because it will promote the prompt and accurate clearance and settlement of transactions in range options by clarifying the text of Rule 1506. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[6] and Rule 19b–4(f)(1)[7] promulgated thereunder because the proposal constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of OCC. At any time within sixty 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-OCC–2008–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2008–19. 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 OCC. 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-OCC–2008–19 and should be submitted on or before February 20, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2021 Filed 1–29–09; 8:45 am]

BILLING CODE 8011–01–P

[4]The Commission has modified parts of these statements.

[5]Securities Exchange Act Release No. 58349 (August 12, 2008), 73 FR 48420 (August 19, 2008) (File No. SR–OCC–2008–15).

[6]15 U.S.C. 78s(b)(3)(A)(i).

[7]17 CFR 240.19b–4(f)(1).

[8]17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 2, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Governors Request for Disaster Declaration.

SBA Form Number: N/A.

Frequency: On Occasion.

Description of Respondents: Presidential Declared Disaster.

Responses: 60.

Annual Burden: 1,200.

Title: Representatives Used and Compensation paid for Services in connection with obtaining Federal Contracts.

SBA Form Number: 1790.

Frequency: On Occasion.
Description of Respondents: 8(a) Program Participants.
Responses: 18,084.
Annual Burden: 18,084.
Title: 8(a) Annual Update.
SBA Form Number: 1450.
Frequency: On Occasion.
Description of Respondents: 8(a) Program Participants.
Responses: 7,528.
Annual Burden: 14,516.

Curtis B. Rich,
Acting Chief, Administrative Information Branch.

[FR Doc. E9–2003 Filed 1–29–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11607 and # 11608]

Massachusetts Disaster Number MA–00020

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Massachusetts (FEMA–1813–DR), dated 01/05/2009.
Incident: Severe Winter Storm and Flooding.
Incident Period: 12/11/2008 and continuing.

DATES: *Effective Date:* 01/16/2009.
Physical Loan Application Deadline Date: 03/06/2009.
Economic Injury (EIDL) Loan Application Deadline Date: 10/05/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Massachusetts, dated 01/05/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Essex, Middlesex.

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. E9–1963 Filed 1–29–09; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to existing OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB),
Office of Management and Budget,
Attn: Desk Officer for SSA,
Fax: 202–395–6974,
e-mail address: *OIRA Submission@omb.eop.gov*.
(SSA),
Social Security Administration,
DCBFM,
Attn: Reports Clearance Officer,
1332 Annex Building,
6401 Security Blvd.,
Baltimore, MD 21235,
Fax: 410–965–6400,
e-mail address: *OPLM.RCO@ssa.gov*.

SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–3758, or by writing to the above listed address.

Credit Card Payment Form—0960–0648. SSA uses the information collected on Form SSA–1414 to process credit card payments for debts owed by former employees and vendors. SSA also uses the information collected on Form SSA–1414 to process advance payments for reimbursable agreements and to process credit card payments for Freedom of Information Act (FOIA) requests that require payment. The respondents are former employees and vendors who have outstanding debts to the agency, entities who have reimbursable agreements with SSA, and individuals who request information through FOIA.
Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 100.
Frequency of Response: 1.
Average Burden per Response: 5 minutes.
Estimated Annual Burden: 8 hours.

Dated: January 22, 2009.

John Biles,
Reports Clearance Officer, Social Security Administration.

[FR Doc. E9–1897 Filed 1–29–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Finding of No Significant Impact

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

ACTION: Notice of environmental finding document: finding of no significant impact.

SUMMARY: The FAA participated as a cooperating agency with the U.S. Air Force (USAF) in preparation of the Environmental Assessment (EA) for the Falcon 1 and Falcon 9 Launch Vehicle Program (Falcon Launch Vehicle Program) at Cape Canaveral Air Force Station (CCAFS), Florida, November 2007. The Falcon Launch Vehicle Program is a commercial venture by Space Exploration Technologies, Inc. (SpaceX) to put spacecraft into orbit and supply the International Space Station (ISS) once the Space Shuttle is retired. The Proposed Action analyzed in the EA includes launching two space launch vehicles, the Falcon 1 and the Falcon 9 from Space Launch Complex (SLC) 40, while utilizing the Solid Motor Assembly and Readiness Facility (SMARF) building as a vehicle support facility, and the reentry and recovery of the Dragon reentry capsule in the ocean.

The EA analyzed the environmental consequences of conducting up to twelve Falcon 1 launches per year and up to twelve Falcon 9 launches per year starting in 2008 for the next five years

from SLC 40 at CCAFS. Two alternative locations, SLC 37 and 47, were considered for the launch of the Falcon vehicles. The EA also analyzed the environmental consequences of reentry/recovery of the Dragon reentry capsule. Additionally, the EA analyzed infrastructure improvements proposed at CCAFS to support the proposed launch activities. The USAF signed a Finding of No Significant Impact (FONSI) on December 21, 2007, which stated that the Proposed Action should not have a significant environmental impact on the human environment.

SpaceX is required to obtain a launch license from the FAA to conduct launches of the Falcon 1 and Falcon 9 launch vehicles with commercial payloads. SpaceX also is required to obtain a reentry license from the FAA for the reentry of the Dragon capsule. The FAA is using the EA to support its environmental determination for a launch license for SpaceX to launch Falcon 1 and Falcon 9 vehicles at CCAFS and a reentry license for the Dragon capsule.

From its independent review and consideration, the FAA has determined that the Proposed Action addressed in this FONSI, to issue a launch or reentry license for Falcon 1 and Falcon 9 launch vehicle activities, is substantially the same as the actions analyzed in the Falcon Launch Vehicle Program EA and that FAA's comments and suggestions have been satisfied (see 1506.3(c) and FAA Order 1050.1E, 518h). The FAA formally adopts the EA and hereby incorporates the analysis to support future decisions on license applications.

After reviewing and analyzing currently available data and information on existing conditions, project impacts, and measures to mitigate those impacts, the FAA has determined that its action is not a Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA). Therefore, the preparation of an Environmental Impact Statement (EIS) is not required and the FAA is issuing this FONSI. The FAA made this determination in accordance with all applicable environmental laws.

For a Copy of the EA or FONSI Contact: Questions or comments should be directed to Mr. Daniel Czelusniak; FAA Environmental Specialist; Federal Aviation Administration; 800 Independence Ave., SW.; AST–I00, Suite 331; Washington, DC 20591; (202) 267–5924.

Background

Launches of launch vehicles and reentries of reentry vehicles must be licensed by the FAA pursuant to 49 U.S.C. Sections 70101–70121, the Commercial Space Launch Act. Issuing a launch or reentry license is a Federal action requiring environmental analysis by the FAA in accordance with NEPA, 42 U.S.C. 4321 *et seq.* Upon receipt of a complete license application, the FAA must evaluate the information and determine whether to issue a launch or reentry license to SpaceX, as appropriate. The FAA would use the analyses in the Falcon Launch Vehicle Program EA as the basis for the environmental determination of the impacts to support licensing launches of the Falcon 1 launch vehicle or the Falcon 9 launch vehicle from CCAFS and/or the reentry of the Dragon reentry vehicle. The issuance of a FONSI does not guarantee that a license will be issued by the FAA for the launch of the Falcon launch vehicles or the reentry of the Dragon capsule. Each license application also must meet all safety, risk, and indemnification requirements.

Proposed Action

SpaceX is proposing to launch the Falcon 1 and the Falcon 9 launch vehicles and the Dragon reentry capsule from CCAF8. The Falcon 1 is a two-stage, light-lift launch vehicle designed to put small spacecraft into orbit. The vehicle uses liquid oxygen (LOX) and kerosene as propellants. Some payloads are expected to be loaded with small amounts of liquid or solid propellants for use in orbit after the launch flight. The first stage is recoverable and could be reused. The second stage is not reusable and is not intended to be recovered.

The Falcon 9 is a two-stage, medium class, liquid launch vehicle designed to put space systems and satellites into orbit. Falcon 9 uses LOX and kerosene as propellants. The second stage and payloads on the Falcon 9 could use small quantities of LOX or kerosene or other propellants including nitrogen tetroxide (NTO), monomethylhydrazine (MMH), or other hydrazine propellants, and solid propellants. Both the first and second stages of the Falcon 9 are recoverable and could be reused.

The Dragon capsule could be carried as a payload on the Falcon 9 vehicle. The Dragon capsule is being developed to deliver cargo to the ISS. Following its mission to deliver cargo to the ISS, the Dragon would reenter the atmosphere on a pre-planned trajectory, would be tracked to a soft landing in the ocean, and would be recovered by a salvage vehicle. The capsule could be refurbished and reused. Locations in the Atlantic Ocean (off the east coast of Florida), the Pacific Ocean (off the coast of California), and the equatorial Pacific (near the Marshall Islands) are being considered as recovery zones.

SpaceX has proposed several infrastructure improvements to CCAFS to support the proposed launch activities, including modifications to SLC 40 and construction of a vehicle and payload processing facility. The potential environmental consequences of these connective actions are considered in this FONSI.

Under the No Action Alternative, SLC 40 would not be modified and proceed towards planned demolition. SLC 40 would not be used by the Falcon Launch Vehicle Program to meet the National Space Transportation Policy's goal of providing low-cost and reliable access to space.

Environmental Impacts

The following presents a brief summary of the environmental impacts described in the Falcon Launch Vehicle Program EA, which are incorporated by reference in this FONSI. This FONSI is based upon the impacts discussed in that EA. The potential impacts addressed in the EA have been analyzed in previous NEPA documents such as the 1998 Evolved Expendable Launch Vehicle (EELV) Final EIS and 2002 NASA Routine Payload Final EA and were used as the ''generic standard'' for launch vehicles and spacecrafts. Specifically, the Dragon capsule design parameters fit within the ''generic'' spacecraft analyzed in the Routine Payload Final EA. Also, the 2005 Programmatic Assessment for Reactivation/Reuse of Launch Complexes on CCAFS document provided background information for environmental impacts associated with the reuse/reactivation of one or more SLCs and the construction of a possible new SLC based on currently known conditions. These documents were used to compare possible impacts of the Falcon Launch Vehicle Program.

Air Quality: Any use of ozone-depleting substances would be in accordance with federal, state, and local laws regulating ozone-depleting substance use, reuse, storage, and disposal. There would be no impact on stratospheric ozone. Generator emissions associated with payload processing would be regulated as stationary sources by the Florida Department of Environmental Protection.

Emissions from launch vehicles would not substantially impact ambient air quality or endanger public health. Each launch would be considered a discrete event that would generate short-term impacts on the local air

quality. Long-term effects resulting from the launches would not be expected because the launches would be infrequent and the resulting emissions would be rapidly dispersed and diluted by winds in the troposphere. The Falcon Launch Vehicle Program would not have an appreciable affect on PM2.5 standards under the current attainment status of CCAFS.

Biological Resources: Site modifications would take place in a developed area and would not entail new ground disturbance. In addition, there would be no disturbance of wetlands because there are no wetlands within the boundary of SLC 40. Biological resource impacts would not be expected from the modification, construction, or use of proposed launch and support facilities. A United States Fish and Wildlife Service (USFWS) approved light management plan would be implemented prior to construction activities and activation of the launch facility to ensure sea turtles are not impacted.

Launch activities could cause some small impacts near the launch pad associated with fire and acidic deposition, but impacts from the Falcon vehicles would be less than those from previous launch vehicles. Although Florida scrub jays, gopher tortoise, southeastern beach mice, indigo snakes and sea turtle nesting occur in the vicinity of SLC 40, post-launch monitoring conducted on previous launches concluded that launch impacts to these species are minimal. Additionally, sonic booms from launches are not expected to negatively affect the survival of any marine species. Exterior lighting at all facilities used for spacecraft processing at CCAFS would comply with established lighting policy to minimize disorienting effects on sea turtle hatchlings.

Cultural Resources: SLC 40 is not eligible for listing on the National Register of Historical Places. It is not considered a historic complex, and there are no historic properties or known archeological sites located in the immediate vicinity. No significant impacts to known historic or archeological resources would be expected as a result of the Proposed Action.

Geology and Soils: No unique geologic features of exceptional interest or mineral resources occur in the project area. Construction related to the Proposed Action would not affect geology and soils; nor would operation of the Falcon Launch Vehicle Program affect geology or soils in the vicinity of SLC 40. Potential wind and water erosion would be controlled by the development and implementation of a Storm Water Pollution Prevention Plan.

Hazardous Materials and Waste: All hazardous materials associated with the Proposed Action would be handled and disposed of per the requirements established by the Occupational Safety and Health Administration (OSHA) and the Hazardous Materials Contingency Plan developed for the Falcon Launch Vehicle Program. Any materials remaining after completion of payload processing would be properly stored for future use or disposed of in accordance with all applicable regulations. All applicable federal, state, county, and USAF rules and regulations would be followed for the proper storage, handling, and usage of hazardous materials under the Falcon Launch Vehicle Program. Furthermore, the Proposed Action would not be expected to result in significant impacts on hazardous materials management or hazardous materials emergency response.

Hazardous waste streams generated by the Falcon Launch Vehicle Program would be typical of other hazardous waste streams in Florida. The existing hazardous waste landfills would have sufficient capacity to handle the small amounts of hazardous waste expected to be generated under the Proposed Action. Furthermore, no significant impacts on hazardous waste management would be expected.

Health and Safety: Proposed refurbishment activities would comply with all federal OSHA regulations and all applicable Air Force Instructions and regulations on refurbishment safety, including AFI 32–1023, *Design and Refurbishment Standards and Execution of Facility Refurbishment Projects,* and Air Force Occupational Safety and Health Standards (AFOSH). Therefore, health and safety impacts during refurbishment would not be significant.

CCAFS range safety regulations ensure that the general public, launch area personnel, and foreign landmasses are provided an acceptable level of safety, and that all aspects of pre-launch and launch operations adhere to public laws. Range safety organizations review, approve, monitor, and impose safety holds, when necessary, on all pre-launch and launch operations. Health and safety impacts to personnel involved in propellant loading operations in the payload processing facilities would be minimized by adherence to OSHA and AFOSH regulations. The Proposed Action would not be expected to result in significant impacts on health and safety.

Orbital Debris: Lower stages of the Falcon would burn out and splash down in the open ocean. Upper stages that achieve Low Earth Orbit would be programmed after spacecraft separation to burn residual propellants to depletion in a vector that would result in reentry in two to three months for a soft-water landing. Upper stages going to higher orbits are not subject to controlled reentry and would contribute to orbital debris. The contribution to orbital debris from the launch of Falcon 1 and Falcon 9 vehicles and spacecraft would not be expected to have a significant impact on the environment.

Utilities: The existing water supply system at SLC 40 can support Falcon 1 and Falcon 9 launch requirements. The amount of solid waste generated under the Proposed Action would be minimal compared to the capacity of the on-base or approved off-base landfills. The electrical power needs of the Falcon Launch Vehicle Program are within the capacity of existing systems. Therefore, no significant impacts on water supply, solid waste management, or electrical power would be expected.

Transportation: A maximum of 15 personnel and 15 daily vehicle round trips would support construction and refurbishment activities, which would not constitute a significant increase in traffic volumes on roadways in the vicinity of CCAFS. A maximum of 25 personnel and 25 daily vehicle round trips would support launch operation activities, which would not constitute a significant increase in traffic volumes on key roadways within CCAFS areas.

Land Use and Visual Resources: The Proposed Action would occur primarily in areas designated for space launch activities. Operations would be consistent with both the Base General Plan and the USAF mission at CCAFS. Activities at SLC 40 and surrounding areas would be in conformance with its designated use. Therefore, no significant land use impacts would be expected.

SpaceX operational activities would have less visual impact than that of prior SLC 40 activities; therefore, no significant impacts within the flight range of the Falcon launch vehicles would be expected.

Noise: There would be a temporary increase in ambient noise levels during construction and refurbishment activities. However, there are no residential areas or sensitive receptors in the vicinity of SLC 40. Refurbishment activities would not be expected to significantly impact endangered species potentially located at SLC 40. Hearing protection would be provided if sound levels exceed OSHA limits.

Based on modeled engine noise levels for the Falcon 1, noise levels associated with the Proposed Action would not be

expected to exceed the DNL threshold of 65 dBA in nearby residential areas or exceed the 85 dBA noise threshold limit value recommended for workers in an 8-hour day. Noise produced from Falcon 1 and Falcon 9 launch vehicles would be sufficiently reduced by the deluge system and would not be expected produce negative affects beyond those that have already been analyzed and experienced under ongoing launch activities. Impacts on humans from sonic booms would not be significant under the Proposed Action.

Socioeconomics: Construction and refurbishment activities would result in a temporary and minor increase in the number of on-base personnel. This increase would not represent a significant increase in the population or growth rate of the region, since most of the construction crew already live and work in the area.

The addition of up to 25 workers at CCAFS to support the Proposed Action does not represent a significant increase in the population or growth rate of the region. The Proposed Action would not significantly affect the local housing market or result in the need for new social services or support facilities. The Proposed Action would not generate negative socioeconomic impacts in the region.

Environmental Justice: Environmental impacts generated by operation, construction, and refurbishment activities for the Proposed Action would not be significant and would not adversely affect minority or low-income populations or children. The operation and refurbishment of the Proposed Action would not cause any environmental justice impacts.

Water Resources: Construction in the northeast quadrant of SLC 40 would not substantially alter the existing drainage course and adverse impacts to natural drainage would not be expected. A Storm Water Erosion and Pollution Prevention Plan would be developed and implemented to minimize impacts from erosion. SpaceX would obtain all necessary permits. Proposed construction and refurbishment activities would not be expected to disturb wetlands or affect any floodplains.

No impacts on surface water quality would occur from industrial wastewater from the deluge water system. Significant impacts would not be expected on jurisdictional waters of the United States from inadvertent discharge of deluge wastewater. When the first stage splashes down in the ocean, approximately 5 gallons of RP–l would be expelled and would dissipate within hours and would not significantly impact water quality. Water demands for the Proposed Action would be supplied by existing water distribution systems at CCAFS, and wastewater would be processed through existing wastewater handling and treatment systems at CCAFS. Water demands would have a negligible impact on these existing systems, and local and regional water resources would not be affected.

Cumulative Impacts: Cumulative impacts to biological resources, air quality, and water resources were considered in the Falcon Launch Vehicle Program EA. Some vegetative damage could occur from occasional brush fires and/or heat from the launch and acid deposition in the near-field areas. The loss of tree and shrub species and an increase of grass and sedge species could occur. Far-field vegetation should recover between launches since far-field deposition would not occur in the same area after each launch. There should be no significant impacts on terrestrial wildlife from the exhaust cloud because the cloud would remain in anyone area for only a short period of time. The implementation of a light management plan to reduce beach lighting during the nesting season should reduce adverse impacts to sea turtles.

Because the atmospheric emissions associated with launch programs are brief and sporadic, the long-term cumulative air quality impacts in the lower atmosphere would not be expected to be significant. Short-term cumulative air quality impacts would not occur because launches for the various programs would not be conducted at the same time. The relatively small emissions associated with ground support operations would have little incremental and cumulative impact in an area that presently meets air quality standards. No long-term adverse air impacts would be expected from refurbishment activities. No cumulative impacts to water resources would be expected.

Determination: An analysis of the Proposed Action has concluded that there would be no significant short-term or long-term effects to the environment or surrounding populations. After careful and thorough consideration of the facts herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives set forth in Section 101(a) of the NEPA and other applicable environmental requirements and will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section I 02(2)(c) of NEPA. Therefore, an Environmental Impact Statement for the Proposed Action is not required.

Issued in Washington, DC on: January 15, 2009.

George Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. E9–1974 Filed 1–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

NextGen Mid-Term Implementation Task Force

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of NextGen Mid-Term Implementation Task Force meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the NextGen Mid-Term Implementation Task Force.

DATES: The meeting will be held February 10, 2009 starting at 1 p.m. to 4 p.m.

ADDRESS: Discovery Ballroom, Holiday Inn Capitol, 550 C Street, SW., Corner of 6th & C Streets, SW., Washington, DC 20024 *(METRO: L'Enfant Plaza Station, Use 7th & Maryland Exit).*

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a NextGen Mid-Term Implementation Task Force meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- NextGen Implementation Overview and Establishment of
- NextGen Mid-Term Implementation Task Force.
- NextGen Task Force Terms of Reference, Organization, and Leadership.
- Closing Plenary (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 22, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–1976 Filed 1–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Placer Parkway Partially Revised Draft Tier I Environmental Impact Statement

DATE: January 2009.

AGENCY: United States Department of Transportation, Federal Highway Administration.

ACTION: Notice of Availability (NOA) of the Placer Parkway Partially Revised Draft Tier I Environmental Impact Statement (EIS).

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of the availability of a Partially Revised Draft Tier 1 EIS for the Placer Parkway Corridor Preservation Project, a proposed transportation corridor in western Placer and eastern Sutter Counties, California. Specifically, the action being considered and evaluated is to select and preserve a 500- to 1,000-foot-wide corridor in the project study area, within which the future four- or six-lane Placer Parkway may be constructed. Placer Parkway is intended to reduce anticipated congestion on both the local and regional transportation system and to advance economic development goals in south Sutter County and southwestern Placer County.

Five corridor build alternatives and a no-build alternative are evaluated in the Draft Tier 1 EIS. Although the Parkway would be designed and construction-level impacts analyzed during Tier 2, for the purpose of the Draft Tier 1 EIS, several assumptions have been made about potential design and configuration concepts. These assumptions would be subject to further development and refinement, and specific decisions about design of the roadway would be made during the Tier 2 process. The Parkway would be a high-speed, limited access roadway. Conceptually, interchanges would be located at SR 70/99 (at one-half mile north of Riego Road or at Sankey Road), one or two locations to be determined in southern Sutter County, Fiddyment Road, Foothills Boulevard, and SR 65 at Whitney Ranch Parkway. Access would be restricted for the 7-mile segment between Pleasant Grove Road and Fiddyment Road. The Draft Tier 1 EIS assumes no interchanges in this segment.

Revisions to the Draft Tier 1 EIS and Additional Analyses in the Partially Revised Draft Tier 1 EIS: The Partially Revised Draft Tier 1 EIS serves as a supplement to the Draft Tier 1 EIS issued in June 2007, to reflect additional analyses developed since the publication of the prior draft. The Partially Revised Draft Tier 1 EIS provides revisions to the Draft Tier 1 EIS, including updates to farmland classification data and greenhouse gas emissions. It also includes additional analyses of growth inducement, secondary and indirect impacts and cumulative impacts based on hypothetical future scenarios prepared for the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.

Public Review and Comment Period: Comments regarding the Partially Revised Draft Tier 1 EIS shall be accepted beginning on January 30, 2009 and must be submitted in writing by 5 p.m. on March 15, 2009 to Placer County Transportation Planning Agency (PCTPA) via regular mail to PCTPA, Attention: Celia McAdam, Executive Director, 299 Nevada St., Auburn, California 95603, or via e-mail to *pctpa@pctpa.net.*

FOR FURTHER INFORMATION CONTACT: Ms. Celia McAdam, Executive Director, 299 Nevada St., Auburn, California 95603, or via e-mail to *pctpa@pctpa.net.*

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at *http://www.access.gpo.gov.nara.*

Background: The FHWA, in cooperation with the California Department of Transportation (Caltrans), Sutter County, and the South Placer Regional Transportation Authority (SPRTA), prepared a Partially Revised Draft Tier 1 EIS on a proposal to select and preserve a corridor for the future construction of Placer Parkway, a new east-west roadway linking State Route (SR) 70/99 in Sutter County east to SR 65 in Placer County. Placer Parkway is intended to reduce anticipated congestion on both the local and regional transportation system and to advance economic development goals in south Sutter County and southwestern Placer County.

Specifically, the action being considered and evaluated by FHWA, Caltrans and SPRTA is to select and preserve a 500- to 1,000-foot-wide corridor in the project study area, within which the future four- or six-lane Placer Parkway may be constructed. Five or six interchanges are proposed, depending on the corridor alignment alternative.

The proposed Parkway project is identified in the Sacramento Council of Government's (SACOG) 2025 Metropolitan Transportation Plan (MTP) and the 2022 Placer County Regional Transportation Plan. The planning for Placer Parkway involves two phases: (1) The present action, selection of a corridor (titled the Placer Parkway Corridor Preservation Project), and (2) the future selection of a precise alignment within the corridor and a decision whether or not to build the Parkway. If a build alternative is selected and pursued after the second phase, the ultimate Placer Parkway project would be constructed and operated. Each phase will be subject to its own environmental review, a process known as ''tiered'' environmental review under both state and federal law. The selection of a corridor is the subject of the Tier 1 EIS.

The Placer Parkway Corridor Preservation Draft Tier 1 EIS was completed on June 29, 2007. It was circulated for public comment on July 2, 2007. The comment period ended on September 10, 2007. To the degree feasible, the Draft Tier 1 EIS reviewed the reasonably foreseeable environmental effects of the construction and operation of the Parkway. Selection of a more precise alignment within the corridor, and construction and operation of the Parkway, will be the subject of a later Tier 2 environmental document.

The Revised Draft Tier 1 EIS serves as a supplement to the Draft Tier 1 EIS issued in June 2007, to reflect additional analyses developed since the publication of the prior draft. The Revised Draft Tier 1 EIS provides revisions to the Draft Tier 1 EIS, including updates to farmland classification data, and greenhouse gas emissions. It also includes additional analyses of growth inducement, secondary and indirect impacts and cumulative impacts based on hypothetical future scenarios prepared

for the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above or to Celia McAdam, Executive Director, PCTPA, 299 Nevada Street, Auburn, CA 95603, no later than March 8, 2009.

The public, as well as agencies and local jurisdictions, are also invited to comment on the Partially Revised Draft Tier 1 EIS at either of two public hearings:

• February 23, 2009—6 p.m. at the Veterans Memorial Community Building, 1425 Veterans Memorial Circle in Yuba City, California.

• February 25, 2009—10:45 a.m. at the Placer County Board of Supervisors Chambers (The Domes), 175 Fulweiler Avenue, Auburn, CA 95603.

Availability of the Partially Revised Draft Tier 1 EIS for Public Review: Copies are available for review at the following locations:

Placer County Transportation Planning Agency, 299 Nevada Street, Auburn, CA
Placer County Planning Department, 3091 County Center Drive, Auburn, CA
Placer County Public Works Department, 3091 County Center Drive, Auburn, CA
Placer County Library, 350 Nevada Street, Auburn, CA
Placer County Library, Loomis, 6050 Library Drive, Loomis, CA
Sutter County Library, Main Branch, 7504 Forbes Avenue, Yuba City, CA
Sutter County Library, Pleasant Grove Branch, 3093 Howsley Road, Pleasant Grove, CA
Sutter County Library, Browns Branch, 1248 Pacific Avenue, Rio Oso, CA
Sacramento County Public Library, 828 I Street, Sacramento, CA
California State University, 6000 J Street, Sacramento, CA
Sutter County Planning Department, 1130 Civic Center Blvd., Yuba City, CA
Sacramento County Planning Department, 827 7th Street, Room 230, Sacramento, CA
Roseville Public Library—Downtown, 225 Taylor Street, Roseville, CA
Roseville Public Library—Maidu 1530 Maidu Drive, Roseville, CA
Rocklin Library, 5400 Fifth Street, Rocklin, CA
Lincoln Library, 590 Fifth Street, Lincoln, CA
Sierra College Library, 5000 Rocklin Road, Rocklin, CA
Sacramento County Library, North Natomas, 2500 New Market Drive, Sacramento, CA
Sacramento County Library, North Highlands—Antelope, 4235 Antelope Road, Antelope, CA

Copies can also be obtained electronically from PCTPA's project Web site at *http://www.pctpa.net*. Additional information, including documents referenced in the Partially Revised Draft Tier 1 EIS, may be obtained by contacting Celia McAdam at the Placer County Transportation Planning Agency at 530–823–4030, Monday through Friday between the hours of 9 a.m. and 5 p.m.

Issued on: January 22, 2009.

Sandra Garcia-Aline,

Director, Local Agency Programs, Federal Highway Administration, Sacramento, CA.

[FR Doc. E9–1797 Filed 1–29–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2009–0009]

Establishment of an Emergency Relief Docket for Calendar Year 2009

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of establishment of public docket.

SUMMARY: This Notice announces the establishment of FRA's emergency relief docket (ERD) for calendar year 2009. The designated ERD for calendar year 2009 is docket number FRA–2009–0009.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for further information regarding submitting petitions and/or comments to Docket No. FRA–2009–0009.

SUPPLEMENTARY INFORMATION: On April 9, 2007, FRA published a final rule addressing the establishment of ERDs and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event. 72 FR 17433. That final rule added § 211.45 to the FRA's Rules of Practice published at 49 CFR Part 211. Paragraph (b) of § 211.45 provides that each calendar year FRA will establish an ERD in the publicly accessible DOT docket system (available on the internet at *http://www.regulations.gov*). Paragraph (b) of § 211.45 further provides that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD for that year. As noted in the final rule, FRA's purpose for establishing the ERD and emergency waiver procedures is to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. This Notice announces that the designated ERD for calendar year 2009 is docket number FRA–2009–0009.

As detailed § 211.45, if the FRA Administrator determines that an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an imminent threat of such an emergency occurring exists, and public safety would benefit from providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect. In such an event, the FRA Administrator will issue a statement in the ERD indicating that the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its Web site *http://www.fra.dot.gov/*. Any party desiring relief from FRA regulatory requirements as a result of the emergency situation should submit a petition for emergency waiver in accordance with 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers in accordance with 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are found at 49 CFR 211.45(h).

Privacy

Anyone is able to search all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 665, Number 7, Pages 19477–78). The statement may also be found at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on January 23, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. E9–1969 Filed 1–29–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0002]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CHARLIE IV.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009 0002 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 2, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009 0002. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CHARLIE IV is:

Intended Use: ''Bareboat and Captained Charters.''

Geographic Region: ''Florida.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: January 22, 2009.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–1989 Filed 1–29–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0002]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GYPSY LADY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009 0002 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 2, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009 0002. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GYPSY LADY is:

Intended Use: ''Captained charters in the Pacific Northwest.''

Geographic Region: ''Oregon and Washington.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: January 22, 2009.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–1990 Filed 1–29–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2009 0005]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MALAMA KAI.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

The complete application is given in DOT docket MARAD 2009 0005 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 2, 2009.

ADDRESSES: Comments should refer to docket number MARAD 2009 0005. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MALAMA KAI is:

Intended Use: ''Small passenger vessel for SCUBA Diving Charter Service.''

Geographic Region: ''Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Hawaii.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: January 22, 2009.

By Order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–1991 Filed 1–29–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0004]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SANTANA.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD 2009 0004 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 2, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009 0004. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SANTANA is:

Intended Use: ''Carrying up to 6 passengers, sailing instruction, and advertising on sails & hull.''

Geographic Region: ''New York Harbor, Hudson and East Rivers, and sailing areas in close proximity.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: January 22, 2009.

By Order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–1992 Filed 1–29–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2009–0017 (PDA–34(R)]

Common Law Tort Claims Concerning Design and Marking of DOT Specification 39 Compressed Gas Cylinders

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to comment on an application by AMTROL, Inc., for an administrative determination as to whether Federal hazardous material transportation law preempts State common law tort claims alleging that the manufacturer of DOT specification 39 compressed gas cylinders should have designed the cylinders to resist rusting over time and/or provided additional warnings of the potential rusting over time, beyond requirements in the Hazardous Materials Regulations (HMR) for the manufacture, marking, and labeling of these cylinders.

DATES: Comments received on or before March 16, 2009, and rebuttal comments received on or before April 30, 2009, will be considered before an administrative determination is issued by PHMSA's Chief Counsel. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The application and all comments are available on the U.S. Government Regulations.gov Web site: *http://www.regulations.gov.*

Comments must refer to Docket No. PHMSA–2009–0017 and may be submitted to the docket in writing or electronically. Mail or hand deliver three copies of each written comment to the above address. If you wish to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the U.S. Government Regulations.gov Web site: *http://www.regulations.gov.* Use the Search Documents section of the home page and follow the instructions for submitting comments.

A copy of each comment must also be sent to (1) Stephen J. Maassen, Esq., Hoagland, Fitzgerald, Smith & Pranaitis, P.O. Box 130, Alton, IL 62002, counsel for Amtrol, Inc., and (2) Rex Carr, Esq., The Rex Carr Law Firm, LLC, 412 Missouri Avenue, East St. Louis, IL 62201–3016, counsel for survivors and next of kin to Kenneth Elder, Jr. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Mr. Maassen and Mr. Carr at the addresses specified in the **Federal Register**.'')

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing a comment submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (70 FR 19477–78), or you may visit *http://www.dot.gov.*

A subject matter index of hazardous materials preemption cases, including a listing of all inconsistency rulings and preemption determinations, is available through the home page of PHMSA's Office of Chief Counsel, at *http://phmsa.dot.gov/legal.* A paper copy of the index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of Chief Counsel (PHC–10), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone No. 202–366–4400; facsimile No. 202–366–7041.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

AMTROL, Inc. has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts State common law tort claims relating to the design and marking or labeling of DOT specification 39 compressed gas cylinders. AMTROL contends that these common law tort claims impose requirements that are not substantively the same as requirements in the HMR for the design and marking or labeling of a cylinder that has been marked and certified as qualified for use in transporting hazardous material.

In its original application dated June 26, 2007, AMTROL stated that it was a defendant in a products liability lawsuit, *Elder* v. *AMTROL, Inc., et al.*, No. 042–08718, brought in the Circuit Court of the City of St. Louis, Missouri. According to AMTROL, a DOT specification 39 cylinder manufactured by AMTROL in 1995 had ruptured ''on January 24, 2003, when Plaintiffs'' decedent placed the rusted cylinder under 170 degree water.'' With its application, AMTROL provided a copy of the transcript of a deposition at which the Elders' expert witness testified (at p. 60) that ''the bottom of the tank ruptured * * * as a result of the thinned and rusted area on the bottom of the tank.'' This witness testified (at pp. 63 and 64) that the cylinder ''could be better designed to prevent rusting and corrosion and include warnings'' and ''at a minimum I would say there needs to be warnings for rust,'' even though he acknowledged (at p. 68) that the cylinder complied with the specification ''as nearly as I can tell.''

The Elders' expert witness also took the position (at p. 69) that the specification requirements in the HMR

> deal[ ] with the transportation of the container. [They do] not deal specifically with the use of the container after it's already in the hands of a technician. It's intended to be used for the transportation of the container with a hazardous material. So just because it meets this particular regulation doesn't mean it is necessarily safe, reasonably safe for its intended use.

In response to a question seeking his opinion of ''what should be done * * *

to design this cylinder to account for corrosion,'' the witness replied (at pp. 77–78):

> If you know where your product has been used, Florida versus, say Arizona, you can determine what the corrosion rate is for these various parts of the country. And it might vary from a tenth of a millimeter per year or it could be a quarter of a millimeter per year for a rusting or corrosion rate. And therefore if you determine these areas of sale, then you might combine that with what you expect in terms of how long the cylinder is in the hands of someone whether it's six months or a year, or two years, or in this case nine years. You could anticipate what your corrosion rate is and whether you needed to make that wall thickness one millimeter, one and a half, or two millimeters or whether you wanted to use a different paint or protect the paint that's on there in some manner. So there's a variety of things that can be done and considered depending on how and who the cylinder is sold to.

AMTROL cited PHMSA's prior decisions in Inconsistency Ruling (IR) Nos. 7–15, 49 FR 46632 (Nov. 27, 1984), and Preemption Determination (PD) No. 2, 58 FR 11176 (Feb. 23, 1993). It specifically referred to the discussion in the general preamble to IRs 7–15 that, in the areas of packaging design and construction, and the marking and labeling of packages, ''the need for national uniformity is so crucial and the scope of Federal regulation is so pervasive that it is difficult to envision any situation where State or local regulation would not present an obstacle to the accomplishment and execution of the HMTA and the regulations issued thereunder.'' 49 FR at 64433.

In a responding letter dated July 12, 2007, the Elders' counsel opposed AMTROL's application and stated that ''the thrust of plaintiffs'' position [is] that the specification required by DOT dealt with and was required to deal with a cylinder that was qualified for use in transporting hazardous material'' but

> The journey had long ended, years before the technician put the contents of the cylinder to use. He was not using the cylinder in a transportation mode; he was simply using the cylinder as an end-user on the job after its journey had ceased. The regulation in question was not intended to cover any use of the cylinder after it had been transported in interstate commerce. The use to which a cylinder might be put by the technicians using them are outside the purview of the regulations. [A] State common law requirement that the products being used on the job be safe for their intended use does not interfere with the DOT regulation. The state common law does not seek to impose its requirement where the cylinder in question clearly, at the time of its manufacture and transportation, complied with the DOT specifications.

The Elders' counsel asked PHMSA to find that the Federal hazardous material transportation law and the HMR ''do not preempt the opinions pertaining to so-called covered areas of 49 USCA § 5125, with regard to labeling and design of specification DOT 39 non-refillable cylinders.''

In a September 11, 2007 letter to AMTROL's counsel, PHMSA's Assistant Chief Counsel for Hazardous Materials Safety Law noted that the State of Missouri had not yet ''adopted a requirement for the cylinder manufacturer to take these additional actions [in the Elders' common law claims], either by law regulation, or judicial decision'' and, accordingly, ''[i]t would be premature for the Chief Counsel to make a determination whether a potential requirement affecting the transportation of hazardous material, which has not yet been adopted or come into effect, would be preempted.'' However, this letter also discussed the adoption of DOT specification 39 into the HMR in 1971, including the specific requirements that the cylinder ''must be shipped in strong outside packagings'' that ''provide protection for the complete cylinder'' and must be marked (1) ''NRC'' for ''non-reusable container'' and (2) with the statement that ''Federal law forbids transportation if refilled'' plus a statement of the maximum civil and criminal penalties applicable at the date of manufacture. These marking requirements are presently set forth at 49 CFR 178.65(i)(2).

PHMSA's Assistant Chief Counsel also referred to the consideration that, because the DOT specification 39 cylinder was nonreusable, it would not be ''subject to cyclic stresses resulting from refilling'' (quoting from the 1970 notice of proposed rulemaking, 35 FR 18879). He stated that ''specification 39 cylinders have always been intended for a single use; there has never been any intent that these cylinders have the strength or durability of cylinders manufactured to other specifications which are authorized for repeated refillings over many years and subject to periodic requalification through inspection and pressure testing.'' He also stated that ''[r]equirements affecting the design, manufacturing, and marking of a cylinder (or other packaging) marked as meeting a DOT specification must be distinguished from requirements affecting the *use* of that cylinder or other packaging.'' He quoted the discussion in the preamble to PHMSA's rulemaking on the ''Applicability of the Hazardous Materials Regulations for Loading, Unloading, and Storage,'' 70 FR 20018, 20024–25 (Apr. 15, 2005), that:

> DOT specification packagings, such as * * * cylinders, are subject to DOT regulation at all times that the packaging is marked to indicate that it conforms to the applicable specification requirements [which means that,] [u]nder the Federal hazmat law, a non-Federal entity may impose requirements on DOT specification packagings only if those requirements are substantively the same as the DOT requirements.

PHMSA's Assistant Chief Counsel stated that the agency

> would have a concern with any State law, regulation, or judicial decision that imposed additional manufacturing and marking requirements on any DOT specification packaging, including a specification 39 cylinder. It would be impractical and burdensome for a manufacturer of these cylinders to have to vary their design, manufacturing process, and markings to accommodate additional and possibly conflicting requirements that varied from State to State—especially requirements for additional wording that indicates or implies that the cylinder is suitable for refilling with a hazardous material and continued use over many years, in conflict with the specific markings required by the HMR. These required markings are part of the safety requirements in the DOT specification for these cylinders and must not be compromised.

He concluded by stating that he ''express[ed] no opinion on the responsibility or liability of any person who loads, stores, or unloads a DOT specification 39 cylinder, or any other DOT specification packaging, that no longer meets the requirements of the DOT specification, when that packaging is no longer in transportation in commerce.

In a September 11, 2008 letter, AMTROL renewed its application for a determination whether Federal hazardous material transportation law preempts the Elders' product liability claims ''based on allegations of defect with regard to 'covered subjects' of labeling and design of [DOT] specification cylinders.'' AMTROL stated that it is now in a Chapter 11 bankruptcy proceeding pending in the United States Bankruptcy Court for the District of Delaware, *In Re Amtrol Holdings, Inc.,* Case No. 06–11446, in which the Elders have filed claims based on the same theories as previously alleged in their Missouri action.

AMTROL explained that the bankruptcy judge has found that the Elders' claims are not preempted by 49 U.S.C. 5125, so that there is now a ''judicial decision imposing additional manufacturing and marking

requirements'' on DOT specification 39 cylinders, and ''the matter is ripe for a determination of whether the Plaintiffs'' Claims now pending in the Bankruptcy Court'' are preempted. AMTROL stated that the Bankruptcy Court ''failed to follow the directive of the DOT, set out in the [Assistant Chief Counsel's] September 11 letter * * * [which] made it clear that if a lawsuit ruling imposed additional manufacturing and [marking] requirements in one state or local jurisdiction, it would be preempted.'' It also stated that ''[e]nforcement of the state requirement would mean that specification 39 non-reusable cylinders would no longer be governed and controlled by specifications set out by Department of Transportation Regulations at 49 CFR 178.65, and that AMTROL, Inc. would be subject to potential lawsuit[s] even under circumstances where, as here, it had complied with all such regulations.''

AMTROL advised that the order of the Bankruptcy Court denying AMTROL's objection to the Elders' claims is currently on appeal to the United States District Court for the District of Delaware, and it has provided copies of the transcript of the hearing before the bankruptcy judge on March 26, 2008, the Bankruptcy Court's April 1, 2008 memorandum opinion, AMTROL'ss notice of appeal, and the Elders' notice of appeal from the Bankruptcy Court's April 1, 2008 order with regard to other issues.

In a September 17, 2008 response, Counsel for the Elders stated that the Bankruptcy Court ''cannot under any circumstances make law for the State of Missouri'' but is ''required to interpret the law of the State of Missouri where the death took place when ruling on issues appropriately within its jurisdiction.'' He stated that the Bankruptcy Court

reviewed the law and found that preemption did not apply ''because the HMTA applied to transportation, not end use.'' (Memorandum Opinion, p. 10). It pointed out examples showing that Congress intended to regulate transportation, not use. It did not impose any additional manufacturing and working requirements on a DOT 39 cylinder. It concluded: ''The DOT declined to opine and, consistent with the court's conclusion, distinguished between use and transportation.'' (Memorandum Opinion, p. 12).

The order of that court in no way adopts new requirements affecting the transportation in interstate commerce.

The following materials are available in the public docket of this proceeding:

—AMTROL's original June 26, 2007 application including a copy of the transcript of the November 17, 2006 deposition of the Elders' expert witness;
—the Elders' July 12, 2007 response to AMTROL's application;
—the September 11, 2007 letter of PHMSA's Assistant Chief Counsel for Hazardous Materials Safety Law;
—DOT's December 11, 1970 notice of proposed rulemaking, 35 FR 18879, and August 24, 1971 final rule, 36 FR 16579, ''Cylinder Specifications'';
—the transcript of the March 26, 2008 hearing in the Bankruptcy Court;
—the Bankruptcy Court's April 1, 2008 memorandum opinion and order;
—AMTROL's April 11, 2008 Notice of Appeal from the Bankruptcy Court's April 1, 2008 order and April 21, 2008 Designation of the Record and Statement of Issues to be Presented;
—the Elders' Notice of Appeal from the Bankruptcy Court's April 1, 2008 order;
—AMTROL's September 11, 2008 reapplication;
—the Elders' September 17, 2008 response to AMTROL's reapplication; and
—AMTROL's October 3, 2008 reply letter.

II. Federal Preemption

Section 5125 of 49 U.S.C. contains express preemption provisions relevant to this proceeding. As amended by Section 1711(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2320), 49 U.S.C. 5125(a) provides that a requirement of a state, political subdivision of a state, or Indian tribe is preempted—unless the non-Federal requirement is authorized by another Federal law or DOT grants a waiver of preemption under § 5125(e)—if

(1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or

(2) The requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), had applied in issuing inconsistency rulings (IRs) prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Department of Homeland Security:

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material.[1]

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d).[2]

The 2002 amendments and 2005 reenactment of the preemption provisions in 49 U.S.C. 5125 reaffirmed Congress's long-standing view that a

[1] Subparagraph (E) was editorially revised in Sec. 7122(a) of the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, which is Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119. Stat. 1891 (Aug. 10, 2005). Technical corrections to cross-references in subsections (d), (e), and (g) were made in Public Law 110–244, Sec. 302(b), 122 Stat. 1618 (June 6, 2008).

[2] Additional standards apply to preemption of non-Federal requirements on highway routes over which hazardous materials may or may not be transported and fees related to transporting hazardous material. *See* 49 U.S.C. 5125(c) and (f). *See also* 49 CFR 171.1(f) which explains that a ''facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments and Indian tribes.''

single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. More than thirty years ago, when it was considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When Congress expanded the preemption provisions in 1990, it specifically found:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 § 2, 104 Stat. 3244. (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745 (July 5, 1994).) A United States Court of Appeals has found uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to PHMSA to make determinations of preemption, except for those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the **Federal Register**. Following the receipt and consideration of written comments, PHMSA publishes its determination in the **Federal Register**. *See* 49 CFR 107.209(c). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(f)(1). A state, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon, above,* 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), PHMSA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism.'' 64 FR 43255 (Aug. 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence Congress intended to preempt state law, or the exercise of state authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which PHMSA has implemented through its regulations.

IV. Public Comments

All comments should be directed to whether 49 U.S.C. 5125 preempts the Elders' common law tort claims against AMTROL, Inc. in their lawsuit in the Circuit Court of the City of St. Louis, Missouri and in the claims filed in the United States Bankruptcy Court for the District of Delaware. Comments should specifically address the preemption criteria discussed in Part II above, including:

(1) The meaning of a State ''requirement'' in 49 U.S.C. 5125 and whether that term must be construed to include State common law tort claims, in light of the Supreme Court's holding in *Riegel* v. *Medtronic,* ____ U.S. ____, 128 S.Ct. 999, 1007 (2008), ''that common-law causes of action for negligence and strict liability do impose 'requirement[s].' ''

(2) Whether common law tort claims relating to the design and marking or labeling of a DOT specification 39 cylinder by the cylinder's manufacturer are ''about'' the designing, manufacturing, or marking of ''a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.''

(3) Whether and how common law tort claims relating to the design and marking or labeling of a DOT specification 39 cylinder by the cylinder's manufacturer affect transportation of the cylinder when filled with a compressed gas.

(4) The manner in which the Elders' decedent was using the DOT specification 39 cylinder which ruptured, including (a) the identity of the owner of this cylinder; (b) the date on which this cylinder was last refilled and who refilled it; and (c) whether this cylinder was permanently located at the site of the rupture or whether the decedent had transported this cylinder to the location where he was ''preparing to use the cylinder to fill a refrigerator with coolant,'' according to the April 1, 2008 memorandum opinion of the Bankruptcy Court.

Issued in Washington, DC, on January 15, 2009.

David E. Kunz,

Chief Counsel.

[FR Doc. E9–1993 Filed 1–29–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35214]

Shawnee Terminal Railroad Co.—Corporate Family Exemption—Alabama Railroad Co., and Alabama & Florida Railway Co., Inc

Shawnee Terminal Railroad Co. (STR), Alabama Railroad Co. (ALAB), and Alabama & Florida Railway Co., Inc. (A&F), have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. The transaction involves the consolidation of ALAB, A&F, and STR, with STR as the surviving corporate entity. Under an agreement and plan of consolidation,

STR will own all of the assets of ALAB and A&F, and STR will be responsible for all debts, liabilities, and obligations of ALAB and A&F.

The transaction is expected to be consummated on or after February 15, 2009 (30 days after the exemption was filed).

STR, ALAB, and A&F are affiliated Class III rail carriers, all of which are controlled by noncarrier holding company, Pioneer Railcorp (Pioneer). STR operates approximately 2.5 miles of rail line in Illinois. ALAB operates approximately 60 miles of rail line in Alabama. A&F operates approximately 43 miles of rail line in Alabama.

The purpose of the transaction is to simplify Pioneer's corporate structure and reduce overhead costs and duplication by eliminating two corporations while retaining the same assets to serve customers. The transaction will also streamline accounting functions within the Pioneer corporate family. Although ALAB and A&F will cease to exist as separate corporate entities, STR will operate the respective rail properties under the trade name the Alabama Railroad, while retaining the ALAB and A&F reporting marks assigned by the Association of American Railroads.

This is a transaction within a corporate family of the type exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the Pioneer corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of is employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay will be due no later than February 6, 2009 (at least 7 days before the effective date of the exemption).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35214, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on applicants' representatives, Robert A. Wimbish, 2401 Pennsylvania Ave., NW., Suite 300, Washington, DC 20037, and Daniel A. LaKemper, 1318 S. Johanson Road, Peoria, IL 61607.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 22, 2009.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–1843 Filed 1–29–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 646 (Sub–No. 2)]

Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: By a decision served on January 30, 2009, the Board directed the Association of American Railroads (AAR), and permitted other parties, to file supplemental evidence so that the Board has a full record on which to base its methodology to calculate a railroad-specific average state tax rate for use in the Revenue Shortfall Allocation Method (RSAM).

DATES: AAR is directed to file supplemental evidence by February 19, 2009. Any interested person may reply by March 11, 2009. AAR's rebuttal is due March 25, 2009.

FOR FURTHER INFORMATION CONTACT: Timothy J. Strafford, (202) 245–0356. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board recently found that the failure to include state and federal taxes in RSAM calculations was material error. The Board concluded that the use of the statutory federal tax rate, combined with a railroad-specific weighted average state tax rate, best approximated the marginal taxes that the carrier would pay on the incremental revenue hypothesized by RSAM.

The decision served on January 30, 2009, directed AAR to submit the evidence and calculations necessary to establish carrier-specific average state tax rates for each Class I railroad, including state corporate income tax rates and the number of miles operated by each carrier in each state it operates in for each of the years 2002–2007, by February 19, 2009. Any interested person may reply by March 11, 2009. AAR's rebuttal is due March 25, 2009. Once there is resolution to any disputes over how to calculate the carrier-specific state tax rates, the Board will publish the new RSAM figures.

Additional information is contained in the Board's decision. A copy of the Board's decision is available for inspection or copying at the Board's Public Docket Room, Room 131, 395 E Street, SW., Washington, DC 20423–0001, and is posted on the Board's Web site, *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 23, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–2056 Filed 1–29–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0074]

Agency Information Collection (Request for Change of Program or Place of Training) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before March 2, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human

Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0074'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0074.''

SUPPLEMENTARY INFORMATION:

Title: Request for Change of Program or Place of Training, (Under Chapters 30 and 32, Title 10, U.S.C.; Chapters 1606 and 1607, Title 10, U.S.C. and Section 903 of Public Law 96–342), VA Form 22–1995.

OMB Control Number: 2900–0074.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants receiving educational benefits complete VA Form 22–1995 to request a change in program or training establishment. VA uses the data collected to determine the claimant's eligibility for continued educational benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 19, 2008, at pages 69721–69722.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Electronically—8,709 hours.

b. Paper Copy—27,095 hours.

Estimated Average Burden Per Respondent:

a. Electronically—15 minutes.

b. Paper Copy—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Electronically—34,836.

b. Paper Copy—81,284.

Dated: January 22, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–2071 Filed 1–29–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0209]

Agency Information Collection (Application for Work-Study Allowance) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 2, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0209'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0209.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Work-Study Allowance, VA Form 22–8691.

b. Student Work-Study Agreement (Advance Payment), VA Form 22–8692.

c. Extended Student Work-Study Agreement, VA Form 22–8692a.

d. Work-Study Agreement, VA Form 22–8692b.

OMB Control Number: 2900–0209.

Type of Review: Extension of a currently approved collection.

Abstracts:

a. VA Form 22–8691 is used by claimants to apply for work-study benefits.

b. VA Form 22–8692 is used by claimants to request an advance payment of work-study allowance.

c. VA Form 22–8692a is used by the claimant to extend his or her work-study contract.

d. VA Form 22–8692b is used by claimants who do not want a work-study advanced allowance payment.

The data collected is used to determine the applicant's eligibility for work-study allowance and the amount payable.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 19, 2008, at page 69720.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 22–8691—4,350 hours.

b. VA Form 22–8692—608 hours.

c. VA Form 22–8692a—25 hours.

d. VA Form 22–8692b—608 hours.

Estimated Average Burden per Respondent:

a. VA Form 22–8691—15 minutes.

b. VA Form 22–8692—5 minutes.

c. VA Form 22–8692a—3 minutes.

d. VA Form 22–8692b—5 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents:

a. VA Form 22–8691—17,400.

b. VA Form 22–8692—7,300.

c. VA Form 22–8692a—500.

d. VA Form 22–8692b—7,300.

Dated: January 22, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–2072 Filed 1–29–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Agency Information Collection (State Application for Interment Allowance) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 2, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0565'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0565.''

SUPPLEMENTARY INFORMATION:

Title: State Application for Interment Allowance Under 38 U.S.C., Chapter 23, VA Form 21–530a.

OMB Control Number: 2900–0565.

Type of Review: Extension of a currently approved collection.

Abstract: Cemetery state officials' complete VA Form 21–530a to request allowances for plot or interment for veterans interred at a State-owned Veteran's cemetery. VA uses the data collected to determine the veteran's eligibility for burial benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 19, 2008, at page 69722.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 1,550 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,100.

Dated: January 22, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–2073 Filed 1–29–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0676]

Agency Information Collection (National Acquisition Center Customer Response Survey) Activities Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 2, 2009.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0676'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0676.''

SUPPLEMENTARY INFORMATION:

Title: Department of Veterans Affairs (VA) National Acquisition Center Customer Response Survey, VA Form 0863 and NAC Conference Registration Form.

OMB Control Number: 2900–0676.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 0863 will be used to collect customer's feedback and suggestions on delivered products and services administered by the National Acquisition Center (NAC). NAC will use the data to improve and/or enhance its program operations for both internal and external customers. The data collected on NAC registration form will be used to ensure conference material is available for all attendees.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 19, 2008 at pages 69720–69721.

Affected Public: Federal Government.

Estimated Annual Burden: 83 hours.

Estimated Average Burden per respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: January 22, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–2074 Filed 1–29–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
January 30, 2009

Part III

Department of Justice

28 CFR Part 25

National Motor Vehicle Title Information System (NMVTIS); Final Rule

DEPARTMENT OF JUSTICE

28 CFR Part 25

[Docket No. FBI 117; AG Order No. 3042–2009]

RIN 1110–AA30

National Motor Vehicle Title Information System (NMVTIS)

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The National Motor Vehicle Title Information System (NMVTIS) has been established pursuant to 49 U.S.C. 30502 and has the participation, or partial participation, of at least 36 states. The purpose of NMVTIS is to assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles into interstate commerce, protect states and individual and commercial consumers from fraud, reduce the use of stolen vehicles for illicit purposes including fundraising for criminal enterprises, and provide consumer protection from unsafe vehicles. This rule implements the NMVTIS reporting requirements imposed on junk yards, salvage yards, and insurance carriers pursuant to 49 U.S.C. 30504(c). This rule also clarifies the process by which NMVTIS will be funded and clarifies the various responsibilities of the operator of NMVTIS, states, junk yards, salvage yards, and insurance carriers regarding NMVTIS.

DATES: *Effective Date:* This rule is effective March 2, 2009.

FOR FURTHER INFORMATION CONTACT: Alissa Huntoon, 810 7th Street, NW., Washington, DC 20531, 202–616–6500, *www.NMVTIS.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Anti-Car Theft Act of 1992, Public Law No. 102–519, 106 Stat. 3384, required the Department of Transportation (DOT) to establish an information system intended to enable states and others to access automobile titling information. As part of the Anti-Car Theft Act of 1992, DOT was authorized to designate a third party to operate the system. Since 1992, the American Association of Motor Vehicle Administrators (AAMVA) has acted in the capacity of the operator of the system. AAMVA is a nonprofit, tax exempt, educational association representing U.S. and Canadian officials who are responsible for the administration and enforcement of motor vehicle laws. The requirements of the Anti-Car Theft Act of 1992 were amended by Public Law 103–272 and the Anti-Car Theft Improvements Act of 1996, Public Law No. 104–152, 110 Stat. 1384. The Anti-Car Theft Improvements Act of 1996 renamed the automobile titling system the ''National Motor Vehicle Title Information System'' and transferred responsibility for implementing the system from DOT to the Department of Justice (DOJ). Hereinafter, the Anti-Car Theft Act of 1992 and the revisions made by Public Law 103–272 and the Anti-Car Theft Improvements Act of 1996, codified at 49 U.S.C. 30501–30505, are collectively referred to as the ''Anti-Car Theft Act''or the ''Act.''

While the overall purpose of the Anti-Car Theft Act is to prevent and deter auto theft, title II of the Act, which authorizes NMVTIS, is intended to address automobile title fraud. Accordingly, the primary purpose of NMVTIS is to prevent various types of theft and fraud by providing an electronic means for verifying and exchanging title, brand, theft, and other data among motor vehicle administrators, law enforcement officials, prospective and current purchasers (individual or commercial), and insurance carriers.[1] Currently, 37 states are actively involved with NMVTIS, representing nearly 75% of the U.S. motor vehicle population. Specifically, 13 states are participating fully in NMVTIS, 14 states are regularly providing data to the system, and an additional 10 states are actively taking steps to provide data or participate fully.[2] States that participate fully in the system provide data to the system on a daily or real-time basis and make NMVTIS inquiries before issuing a new title on a vehicle from out of state and preferably before every title verification, regardless of its origin or reason. Participating states also pay user fees to support the system and the services provided to the state.

In 2006, the Integrated Justice Information Systems (IJIS) Institute, a nonprofit membership organization made up of technology companies, was asked by Department of Justice's Bureau of Justice Assistance (BJA) to conduct a full review of the NMVTIS system architecture to identify any technological barriers to NMVTIS implementation and to determine if any potential cost savings was available through emerging technology. The IJIS Institute report found that ''the NMVTIS program provides an invaluable benefit to state vehicle administrators and the public community as a whole. Advantages of the program include improving the state titling process, as well as providing key information to consumers and law enforcement agencies.'' In addition to this study, the Government Accountability Office (GAO) also found NMVTIS to hold benefit potential for states, and a private cost-benefit study also determined that NMVTIS could provide benefits in the range of $4 to $11 billion dollars annually if fully implemented. NMVTIS and its benefits to states, law enforcement, consumers, and others have been widely touted by motor vehicle or auto-industry organizations including AAMVA and the National Automobile Dealers Association (NADA), by law enforcement organizations such as the International Association of Chiefs of Police and the National Sheriffs Association, by the North American Export Committee (NAEC), and by the International Association of Auto Theft Investigators. NMVTIS's benefits have also been recognized by national consumer advocacy organizations, and by industry-affiliated groups including the National Salvage Vehicle Reporting Program and many others, as identified in the public comments.

NMVTIS is a powerful tool for state titling agencies. Fully participating state titling agencies are able to use NMVTIS to prevent fraud by verifying the motor vehicle and title information, information on brands applied to a motor vehicle, and information on whether the motor vehicle has been reported stolen—all prior to the titling jurisdiction issuing a new title. In order to perform this check, these states run the vehicle identification number (VIN) against a national pointer file, which provides the last jurisdiction that issued a title on the motor vehicle and requests details of the motor vehicle from that jurisdiction. Using a secure connection, states then receive all required information or the complete title of record from the state of record. States can then use this information to verify information on the paper title being presented.

Verification of this data allows fully participating states to reduce the issuance of fraudulent titles and reduce

[1] Brands are descriptive labels regarding the status of a motor vehicle, such as ''junk,'' ''salvage,'' and ''flood'' vehicles.

[2] There are currently 13 states participating fully in NMVTIS: Arizona, Florida, Indiana, Iowa, Kentucky, Massachusetts, New Hampshire, Nevada, Ohio, South Dakota, Virgina, Washington, and Wisconsin. Fourteen states are providing regular data updates to NMVTIS: Alabama, California, Delaware, Georgia, Idaho, Louisiana, Nebraska, New Jersey, New York, North Carolina, Pennsylvnia, Tennesses, Texas, and Wyoming. Ten states are actively taking steps to provide data or participate fully: Arkansas, Michigan, Minnesota, Missouri, Montaina, New Mexico, Oklahoma, South Carolina, Vermont, and West Virginia. See *www.NMVTIS.gov* for a map of current participation status.

odometer fraud. Once the inquiring jurisdiction receives the information, a state is able to decide whether to issue a title. For states fully participating through integrated, online access, if a new title is issued, NMVTIS notifies the last titling jurisdiction that another jurisdiction has issued a title. The old jurisdiction then can inactivate its title record. This action allows fully participating jurisdictions to identify and purge inactive titles on a regular basis and eliminates the need for these agencies to conduct these processes manually. This service provides a measurable benefit to states in terms of cost savings. In 2007, over 18.4 million title-update transactions were initiated and over 45 million messages were generated via NMVTIS, which allows states to work and communicate securely and to perform electronic title transactions between states.

NMVTIS also allows fully participating states to ensure that brands are not lost when a motor vehicle travels from state to state. As noted above, brands are descriptive labels regarding the status of a motor vehicle. Many brands, such as a flood vehicle brand, indicate that a motor vehicle may not be safe for use. Unfortunately, motor vehicles with brands on their titles can have their brands ''washed'' (*i.e.*, removed) from a title if the motor vehicle is retitled in another state that does not check with the state that issued the previous title and with other states that may have previously issued titles on the vehicle to determine if it has any existing brands not shown on the paper title. Because NMVTIS keeps a history of brands applied by any state to the motor vehicle at any time, it protects individual and corporate consumers by helping ensure full disclosure so that purchasers are not defrauded or placed at risk by purchasing an unsafe motor vehicle. Currently, there are approximately 300,000,000 VINs in NMVTIS with over 40,000,000 brands included. NMVTIS also prevents ''clean title'' vehicles that are actually a total loss or salvage from being used to generate a paper title that is later attached to a stolen vehicle that is ''cloned'' to the destroyed ''clean title'' vehicle. Criminal enterprises seek these ''clean title'' vehicles, which are low cost to them (because they are destroyed or salvage), because it increases their return when they sell a cloned stolen vehicle. It has been noted that criminal profits in such a case can more than quadruple if a ''clean title'' vehicle is used for cloning. Even worse, because these cloned vehicles are able to get into the titling systems of the non-participating states, they often continue to be sold to new and unsuspecting owners. There have been cases involving car dealers who had purchased stolen cloned vehicles and resold them to individual consumers. NMVTIS also provides protections from other types of related theft and fraud that ultimately place lives at risk and cost states, consumers, and the private sectors billions of dollars each year. The proceeds from these illicit activities support additional crime and fraud and even serious and violent crime. For more information on the benefits of NMVTIS, visit *www.NMVTIS.gov*.

Discussion of Comments

On September 22, 2008, the Department of Justice published a proposed rule to implement various requirements concerning NMVTIS. *See* National Motor Vehicle Title Information System (NMVTIS), 73 FR 54544 (Sept. 22, 2008). The rule proposed the imposition of reporting requirements on junk yards, salvage yards, and insurance carriers. In addition, the rule clarified the funding process for NMVTIS and the responsibilities of the operator of NMVTIS, states, junk yards, salvage yards, and insurance carriers. The comments and the Department's responses are discussed below:

1. General Comments

Comment: Several commenters suggested that NMVTIS will deter various types of crime and fraud and suggested that since the passage of the Anti-Car Theft Act, the types of crime and fraud, as well as the methods, have evolved. These commenters noted that the purpose of NMVTIS remains to address these types of crime and fraud.

Response: DOJ agrees that since the passage of the Anti-Car Theft Act, crimes and crime techniques have evolved. DOJ, therefore, has updated the stated purpose of NMVTIS to be more reflective of the crime and expansive direct and indirect fraud NMVTIS was intended to address and is addressing today.

Comment: The American Salvage Pool Association (ASPA) commented that junk and salvage yards have an exemption for reporting where and when a non-stolen verification is obtained under 49 U.S.C. 33110, which authorizes a system that has never been implemented. The ASPA commented that this exemption ''is telling, however, in linking NMVTIS'[s] statutory purpose to theft prevention, as opposed to brand information.''

Response: In addition to the fact that title II of the Anti-Car Theft Act addresses fraud, it is clear that brand information can be directly linked to vehicle theft in addition to fraud. Law enforcement investigations have repeatedly shown that ''clean title'' total loss vehicles are a preferred commodity among car cloning and car theft rings, as they bring a higher return on investment. The Anti-Car Theft Act exemption, which is in 49 U.S.C. 33111, provides that junk and salvage yards are not required to report on an automobile if they are issued a verification under 49 U.S.C. 33110 stating that the automobile or parts from the automobile are not reported as stolen.

2. Effectiveness

Comment: Several submissions questioned the effectiveness of NMVTIS in eliminating or preventing fraud and theft. Several of these commenters suggested the need for quantitative proof of the system's effectiveness before the law should be followed. At the same time, however, several submissions recognized the value of NMVTIS. As one commenter noted, ''NMVTIS would undoubtedly cut down on the number of rebuilt wreck fraud cases.'' And the State of Texas Department of Transportation noted that ''[t]he system provides numerous obvious benefits to titling agencies, law enforcement[,] and vehicle sellers, as well as consumer protection to the buying public.''

Response: The Anti-Car Theft Act's participation requirements were established based on analyses presented at the time of the bill's introduction and passing. Further, an extensive cost-benefit analysis and a Government Accountability Office study both have independently determined that NMVTIS will produce a significant public benefit that greatly exceeds the costs of implementing the program. The cost-benefit study found that the system is only as effective as the number of vehicles represented in the system. Non-participating states create ''loopholes'' where brands can be washed, allowing further fraud in any state—participating or not. Discussions with private-vehicle-history-report providers and ongoing law enforcement investigations at the state, local, and federal levels have shown that non-participating states are targeted for exploitation because their vehicle titling information is not immediately shared with other states and because they have no efficient ability to inquire with all other states that may have previously titled the vehicle.

Feedback from participating states points to other positive outcomes of the program. One state reports a 17%

decrease in motor vehicle thefts; another reports a 99% recovery rate on vehicles identified as stolen; three states have identified cloned vehicles by working together, prior to issuing new titles; and another state reports cracking a car theft ring responsible for cloning more than 250 cars worth $8 million. Aside from these results, it is clear that if all states comply with the Anti-Car Theft Act requirements, brand washing in the way it is most commonly conducted today will be eliminated because there is no other way to title a vehicle other than going through a state titling process. The same goes for vehicle cloning, which would be virtually eliminated if every state participated as required.

Moreover, Experian Automotive reported that in the first six months of 2008 alone, there have already been more than 185,000 titles that initially were branded in one state, and were then transferred and re-titled in a second state in a way that resulted in a purportedly clean title. Given all these facts, we can be sure that NMVTIS will be effective in eliminating this type of fraud, preventing a significant number of crimes, and potentially saving the lives of citizens who would otherwise purchase unsafe vehicles.

In addition to the system's documented value in reducing theft and fraud in protecting consumers, the system also has been shown to create greater efficiencies within the titling process when the inquiry and response are integrated into the states' titling processes.

Comment: NAEC commented that ''the effectiveness [of NMVTIS] can only be truly measured [when] all jurisdictions are participating, because of the holes that are currently in the system due to lack of full participation.'' The State of California Department of Motor Vehicles seemingly agreed with this comment when it noted that ''these beneficial outcomes can only be achieved when all 50 states and the District of Columbia are participating.'' The Virginia Department of Motor Vehicles commented that ''the system provides a great value to participating states, and that value will exponentially increase as each jurisdiction begins fully participating.''

Response: DOJ agrees in part with these assessments. As discussed above, partial participation creates loopholes that criminal organizations exploit, and, therefore, measuring the full benefit of a comprehensive NMVTIS is difficult without participation by all states. However, NMVTIS provides significant benefits to participating states even when state participation is not at 100%.

Comment: One commenter asked if the information would have much ''practical utility,'' or whether it would only serve as further documentation of a market that is only broadly related to secondary criminal enterprises. The commenter further noted that ''the rule will only spur increased sophistication of organized crime. This increased sophistication must be balanced against the proposed benefits from the small contraction in the secondary criminal market that is assumed to occur under this rule. One of the benefits of the proposed rule is the documentation of salvage pool sales. But this benefit is limited: it will only require criminals to go through more steps, steps that require increased organizational skills. Hence, although the rule may push some criminals out of the market overall (the less sophisticated and organized), it will also indirectly spur increased sophistication and organization of the surviving criminal organizations. Although one of the primary goals of NMVTIS is theft deterrence, there is no data to support the conclusion that this portion of the criminal market will be affected by the proposed rule.''

Response: DOJ disagrees with these comments. Substantial evidence, statements, and documentation indicate that NMVTIS will impact vehicle theft and fraud.

Comment: Several commenters, including law enforcement, consumer advocates, industry associations, and state motor vehicle administrators, including California's, noted that NMVTIS is needed and will be effective in addressing the threats of auto theft, cloning, and fraud, and in providing protection for consumers against fraud.

Response: DOJ agrees with these comments and notes that the expected benefits and positive outcomes of NMVTIS have been confirmed not only by government and private research, but also by multiple representatives of every stakeholder community affected by the system, including state titling agencies, state and local law enforcement, consumers, insurance carriers, and junk- or salvage-yard operators.

Comment: The NAEC commented that law enforcement successes to date can validate the benefits and costs associated with NMVTIS and that ''the NAEC is solid in its belief that NMVTIS is a fundamentally sound approach to 'title washing,' title fraud, vehicle theft[,] and public safety related to the 'branding' of un-road worthy vehicles in this Country.'' The NAEC provided data from one state that uses NMVTIS and, as a result, has identified and recovered hundreds of stolen vehicles. The NAEC further commented that to suggest that the system should be cancelled ''demonstrates a lack of understanding [of] the magnitude of the vehicle theft problem in North America and Public Safety issues surrounding 'branded' vehicles.''

Response: DOJ agrees with the NAEC's assessment of NMVTIS.

Comment: The State of Illinois Motor Vehicle Administration commented that other services have become available since the Anti-Car Theft Act was passed and that NMVTIS should ''be put on hold'' while an analysis on the need for NMVTIS can be conducted. The Maine Bureau of Motor Vehicles suggested that NMVTIS was not needed because ''consumers have other options for checking vehicle title status prior to purchase.''

Response: While other fee-based options for checking vehicle title status are available for consumers, the ability of consumers to check NMVTIS for vehicle title status is required by federal law and a federal court order. When fully implemented, NMVTIS will provide assurances that no other option can provide—complete and timely information on all vehicles in the U.S. The Anti-Car Theft Act provided no flexibility for states, insurance carriers, or junk or salvage yards to filter information shared with NMVTIS; thus NMVTIS will be the most-reliable source of information once fully implemented. Several providers of vehicle history information have agreed to make NMVTIS data available as a way of enhancing their products, demonstrating that NMVTIS does have unique value. DOJ is not in a position to put NMVTIS on hold, as recent litigation was based on the complaint that DOJ had waited too long to issue NMVTIS regulations. A court has ordered DOJ to publish these regulations by January 30, 2009. *See Public Citizen, Inc. v. Mukasey*, No. 3:08–cv–00833–MHP, 2008 WL 4532540 (N.D. Cal. Oct. 9, 2008).

Comment: One commenter noted that ''it is beyond the scope of the NMVTIS regulations to reform the process by which insurers assign title designations; however having the sales reported in a timely fashion, and by including appropriate identification of both international, domestic (out of state) and domestic (in state) buyers, it will help the Law Enforcement Community in its effort to control crime and protect the public.''

Response: It is beyond the scope of NMVTIS and DOJ's intentions to alter insurance carrier policies and procedures in terms of title designations. While transfers of vehicles from insurance carriers to others would

likely be captured in the NMVTIS reporting process due to subsequent reporting by junk and salvage yards, it is unlikely that the names of buyers will be reported or captured in the system because this is not a required data field. Requiring the name of such buyers is of significant value to law enforcement for preventing and investigating automobile theft and fraud. Additionally, as is pointed out elsewhere in these comments, establishing a ''chain of possession or custody'' is important for effective and efficient law enforcement investigations.

Comment: One commenter noted that ''[a]ccording to Experian Automotive, (PR Newswire August 25, 2008 Experian, Schaumburg, IL), in the first 6 months of 2008 alone, there have already been more than 185,000 titles that initially were branded in the first state, and were then transferred and re-titled in a second state in a way that resulted in a 'clean' title. This situation cannot be addressed without much stronger controls and full reporting. There is a great deal of abuse of the title system and we regularly observe severely damaged units that have been given clean title designations to vehicles that have massive damage. As a result, criminals regularly buy these vehicles for the paper, and steal a like vehicle and engage in cloning or VIN swapping.''

Response: Once all states comply with the law, NMVTIS will protect against these types of abuses by creating a brand history (a record of the various brands associated with a particular VIN) for every vehicle, which will prevent a future title-issuing agent from being unaware of a vehicle's brand history and will eliminate the possibility of a vehicle being titled in more than one state (a common occurrence today).

Comment: Maine Bureau of Motor Vehicles commented that Maine ''already has procedures in place to check for stolen status prior to issuing a title and for carrying forward out-of-state brands.''

Response: NMVTIS is designed to provide more than a simple stolen-vehicle check. Further, neither carrying forward out-of-state brands based on paper titles presented, nor checking the paper documentation against a third-party data provider, eliminates brand washing. Washed brands may not appear on paper or in third-party databases. Because states are required to report title transactions to NMVTIS and to check NMVTIS prior to issuing a new title, NMVTIS is the only system that can eliminate such brand washing when fully implemented. No state, except those participating in NMVTIS when fully implemented, has any ability to fully verify brand histories and carry forward out-of-state brands without manually contacting every state and the District of Columbia prior to issuing a new title.

Comment: One commenter noted that ''the benefits of NMVTIS are also not illogical simply because concrete figures do not exist concerning its limited implementation.'' ''Given NMVTIS'[s] [implementation] status, any figures outlining the benefits would prove highly conservative even if found. It is not difficult to imagine though that illegal reselling of salvaged vehicles takes advantage [of] reporting gaps by moving across state lines. Statistics concerning such operations are well-documented even if the benefits of NMVTIS are not.'' ''Being able to verify the success and results of NMVTIS thus depends critically on the provision of information from all states.''

Response: DOJ agrees with this comment.

Comment: The Missouri Department of Revenue commented that the system is only as good as the number of jurisdictions participating, and in light of current participation levels, the state is expending resources for data that may not be inclusive or accurate.

Response: As of December 2008, NMVTIS includes nearly 75% of the U.S. vehicle population. At the same time, several states are actively working towards participation in NMVTIS, which will take NMVTIS closer to 100% participation. With the inclusion of insurance and junk- and salvage-yard information, and given that many states report to NMVTIS in ''real time,'' NMVTIS is likely to be as inclusive as any vehicle title history database available, even before 100% state participation. As for accuracy, the system currently includes only data from state motor vehicle administrations, and DOJ is aware of no errors in NMVTIS. As stated in this rule, procedures and safeguards will be put into place to ensure identification and correction of any errors identified. Non-participating states, on the other hand, are expending their resources based on fraudulent information when they issue titles in many situations.

3. Need and Purpose

Comment: One commenter asked ''To what extent is consumer protection and the prevention of fraud in the secondary car market domestically and internationally a high priority for the agency?''

Response: The prevention of fraud that affects U.S. citizens, whether it be here or abroad, and consumer protection are priorities for DOJ and for NMVTIS. DOJ's Strategic Plan includes in its second goal ''Strategic Objective 2.5: Combat public and corporate corruption, fraud, economic crime, and cybercrime.'' *U.S. Department of Justice Strategic Plan, Fiscal Years 2007–2012.*

Comment: One commenter noted that states often sell their vehicle history records to private, third-party organizations who then resell the data. The commenter requested that the final rule spell out that the states own the data and that the operator of the system may not resell the data to other providers without authorization of the states.

Response: While NMVTIS may contain a subset of data on vehicles titled within the U.S., it does not include all of the information a state motor vehicle administration may possess. DOJ agrees that the state-maintained vehicle history databases are the province of the states, and that the intent of the Anti-Car Theft Act was not to create a database of information for bulk resale. The operator of the system, therefore, will not resell the NMVTIS database in its entirety to anyone. Two key goals of the Anti-Car Theft Act, however, are consumer access to the data and a self-funded system. For these reasons, the operator will be allowed to charge consumers for use.

Comment: The State of Illinois motor vehicle administration questioned how NMVTIS will interface with law enforcement data systems within the state that are used to identify and ''flag'' stolen vehicles.

Response: NMVTIS is not expected to ''interface'' with law enforcement systems within the state. Information in NMVTIS related to a vehicle's ''theft status'' or history emanates from one of two places—state brands and the theft file of the National Insurance Crime Bureau (NICB), which is derived from the FBI's National Crime Information Center (NCIC). Law enforcement systems will be able to link or connect to the NMVTIS law enforcement access site, however, which will include all NMVTIS information without restriction. NCIC will always be the primary repository of active theft files for law enforcement. Stolen vehicle information in NMVTIS is provided only for state titling purposes for those states that cannot access NCIC or state-based law enforcement systems.

4. Prospective Purchaser Inquiries

Comment: The Idaho Transportation Department commented that the proposed rules included several data elements in the requirement for prospective-purchaser inquiry responses

or consumer access reports that would effectively eliminate the need for an actual state record to be requested by a consumer or prospective purchaser, thereby reducing state revenues realized from the sale of motor vehicle records.

Response: At a minimum, NMVTIS will provide the following pieces of information in response to an inquiry, if that data is present in NMVTIS: (a) The current state of title; (b) the brand history of the vehicle; (c) the latest reported odometer reading; and (d) information about the vehicle's reported appearance in the inventory of a covered junk or salvage yard or on any insurance carrier determination of total loss related to that vehicle. There are several reasons, however, why states are likely to continue to experience demand for their full title records. First, states often possess additional information that is not anticipated to be within NMVTIS but that is of interest to many purchasers. This information may include ownership information, lien-holder information, registration information, safety-inspection data, and other details that the states may have but are not required to report to NMVTIS. Second, by providing consumers with the current state of title, NMVTIS actually serves as a nationwide pointer that will result in an increase in requests for state records. And DOJ will direct the operator to ensure that all consumer access portal providers provide consumers with a link to the state's site or to the state's designated vehicle history report access point, enabling consumers to purchase the full state record. Third, states are eligible to become portal providers, thereby capturing an opportunity to increase revenues by providing access to NMVTIS data and to the states' records for a state-determined fee.

Comment: The State of Nevada Department of Motor Vehicles commented that ''Nevada will not allow the unauthorized release of the title data we send to NMVTIS. Nevada statutes limit what data can be released and to whom. Will AAMVA have the capability and assume the responsibility of prescreening those who want to access Nevada title data to ensure the disclosure complies with Nevada statutes? Will AAMVA have the capability of collecting and forwarding the fees currently charged for accessing and receiving Nevada's title records without Nevada becoming a third party?''

Response: Neither NMVTIS nor the operator will be releasing any state's vehicle title records. The information that will be shared via NMVTIS is not a state's vehicle title record and is generated from the index maintained by NMVTIS, with limited information on the identified vehicle, as authorized and directed by the Anti-Car Theft Act. This federal statute provides the necessary authorization and direction concerning what information will be shared, how it will be shared, and to whom it can be shared. After providing the NMVTIS information in response to a consumer inquiry, NMVTIS, through the third-party portal providers, will offer consumers the ability to be directed to the state of record's Web site in order to purchase the state's full vehicle title record from the current state of record. Once that ''handoff'' occurs, any decision by consumers to purchase the state's title record will be governed by applicable state statutes, policies, and processes, and by the state's vehicle-history-report provider's policies and processes. NMVTIS prospective purchaser inquiry was designed in this way in an effort to point consumers to state Web sites for state vehicle title histories from that state should they be desired and available, thus enabling consumers to purchase the full record and generating revenues for the states.

Comment: Several motor vehicle administration agencies and other organizations commented that if personal information is released by NMVTIS to non-government organizations, it may be in conflict with the provisions of the Driver's Privacy Protection Act of 1994 (DPPA). Several of these commenters recommended that this information only be available to law enforcement or government organizations, while others indicated that they would be prohibited from sharing personal information with prospective purchasers.

Response: According to the DPPA, 18 U.S.C. 2721(b)(2), permitted uses of information protected by the DPPA include ''[f]or use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.'' In addition, 18 U.S.C. 2721(b)(3) provides additional authorizations ''[f]or use in the normal course of business by a legitimate business or its agents, employees, [or] contractors.'' These exceptions include sufficient authorization for states to provide access to personal identifying information, and many commenters agreed. Nonetheless, NMVTIS includes personal information primarily for the benefit of law enforcement agencies, including governmental regulatory and compliance-monitoring agencies that may not have immediate access to such data or to state motor vehicle-history files. NMVTIS will not provide personal information in the NMVTIS central file to individual prospective purchasers and may not provide access to any other type of user without securing DOJ approval of such access.

Comment: Several commenters, notably from the consumer-advocacy community, encouraged DOJ to ''minimize, to the greatest extent possible[,] any cost to consumers for accessing the data base.''

Response: By statute, the fees NMVTIS charges will not be more than the costs of operating the system. Although NMVTIS does not control what portal providers will charge for consumer access to the data, by making that data available to all potential portal providers at the same price, it will be difficult for any provider to charge too high a premium for access to that data.

Comment: One commenter noted that NMVTIS will make it possible for users to understand either what a state-issued brand (*i.e.*, statement of the condition or prior use of a vehicle) means or to which state they need to go to understand the brand's meaning. ''Even if in some circumstances NMVTIS can say nothing more than 'branded in jurisdiction X,' at least the NMVTIS user will know which [state] jurisdiction to consult.''

Response: Because neither the Anti-Car Theft Act nor NMVTIS creates universal brands, DOJ will direct the NMVTIS operator to ensure that consumer-access portal providers provide a link to brand definitions and any available related explanations, so that consumers can be aware of how brands may be defined. One of NMVTIS's benefits is that it will identify which states have branded a vehicle, informing consumers of which jurisdiction to consult for further information.

Comment: The State of Alaska commented that neither DOJ nor the NMVTIS operator should be permitted to discount transaction fees for volume purchasers. This commenter stated that not discounting the price will maximize revenue collected to offset NMVTIS operational costs, resulting in reduced rates charged to the states.

Response: The volume discounts established by the current operator have been more effective in securing consumer-access portal providers than the non-discounted rates. DOJ will continue to monitor the fee structure to

ensure that it is effective in securing participating providers without increasing reliance on state fees. Fees generated through the portal providers will offset the financial impact on states.

Comment: One commenter noted that the NMVTIS prospective-purchaser inquiry is redundant of similar services that already exist.

Response: A significant number of consumer advocacy, law enforcement, and other organizations submitted comments arguing that NMVTIS's prospective-purchaser inquiry is not redundant with existing services. For example, NMVTIS receives certain state data more frequently than some of the third-party databases, and the data NMVTIS receives includes information that some of the third-party databases do not have.

Comment: The Institute of Scrap Recycling Industries, Inc. (ISRI) argued that the law does not give DOJ the authority to expand NMVTIS data collection to further the interests of a particular group of stakeholders. The ISRI expressed concern that certain stakeholders would promise smooth and easy implementation of the rule if DOJ were to demand collection of additional data for NMVTIS.

Response: No individual or entity has made such claims or promises, and DOJ has not expanded the scope of data to be collected beyond that which was intended or demonstrated to be necessary to accomplish the program's goals as set forth in statute.

5. Privacy

Comment: One commenter noted that ''[t]here are provisions in law in regards to privacy of individual identity that do not appear to be satisfactorily addressed in this document.'' Another commenter noted that it will not send any names to NMVTIS because names do not validate a title and because of concerns over compliance with the DPPA. The Virginia Department of Motor Vehicles commented that NMVTIS was intended as a pointer system, and it is not necessary for that pointer system to include all data fields, particularly private information. AAMVA also recommended against requiring owner name in the NMVTIS central file for privacy and cost reasons.

Response: DOJ takes these concerns very seriously and agrees that privacy interests must be protected. While names may not be needed to validate a title, names are relevant and necessary from a law enforcement perspective, and in certain other situations. To ensure the protection of privacy, however, DOJ has amended the rule to provide that no privacy fields shall be available without DOJ approval to any NMVTIS user, other than state-titling, law enforcement, or other government agency. Additionally, the operator shall ensure that no individual prospective purchaser has access to any personal information. DOJ will require that the operator of NMVTIS have an approved privacy policy in place that describes how the operator will ensure adequate privacy protections, consistent with the DPPA and other relevant statutes.

Comment: NAEC noted that data privacy fields should be available for law enforcement purposes.

Response: DOJ agrees with this comment.

Comment: The Automotive Recyclers Association (ARA) and ISRI both emphasized that confidential business information, such as the number and type of automobiles processed by individual junk and salvage yards in a given period of time, the sources of those vehicles, and related information, should not be released to the public or other data providers.

Response: The operator will not disseminate this type of information to any non-governmental entity or individual, and this information will not be available to prospective purchasers. DOJ will closely monitor this aspect of the system to ensure that access to sensitive or personal data only proceeds with DOJ approval.

Comment: Several commenters requested clarification in the final rule on any liability or immunity for providing data to NMVTIS as the Anti-Car Theft Act requires.

Response: The Anti-Car Theft Act grants certain immunity for those reporting data to the system. The scope of this immunity is described in the Act at 49 U.S.C. 30502(f) and does not require clarification.

Comment: Several commenters recommended maintaining provisions for accessing personal information to qualified DPPA commercial consumers, so that entities that currently work with the states to access this information could continue to do so, which would benefit the states and NMVTIS.

Response: Providing continued access to these entities may facilitate effective and efficient service to the states, but such access may only occur with DOJ approval, and may also require compliance with state application and certification processes and procedures. In most cases, these entities will only use NMVTIS as a pointer to connect with and access the state's data, including personal information, if the state provides for that access.

6. Timely Reporting

Comment: Several commenters, including several national consumer-advocacy organizations, requested that dispositions by insurance, junk, or salvage sales to other entities be reported at the time of the sale and include the identity of the buyer, which would support law enforcement investigations into fraud and theft. The National Salvage Vehicle Reporting Program also commented that salvage pools should be required to report sales within one business day of the sale in order to reduce fraud and theft.

Response: The reporting of dispositional information is critical and needs to be timely, but the DOJ cannot require that the reporting be anything other than monthly in accordance with the requirements of the Anti-Car Theft Act. DOJ has added a requirement for such entities to report the name of the primary buyer of such vehicles.

Comment: ARA and ISRI commented that junk- and salvage-yard operators have an interest in reporting efficiency and recommended that such entities be permitted to report the ultimate intended disposition of the vehicle at the time of initial reporting. ASPA also reported that requiring an entity to continuously report that a vehicle is in its inventory is inefficient and pointless.

Response: In cases where the ultimate disposition is known with certainty, junk- and salvage-yard operators now will be permitted to report disposition in their initial report. The reporting entity is responsible for ensuring that the vehicle is disposed of in the manner reported or for filing an updated report to account for a different disposition. In response to concerns of reporting inefficiency, DOJ notes that entities report once when the vehicle enters the inventory and are only required to report again on that vehicle if they need to update the record. Should the disposition be known at the time of initial reporting (*e.g.*, ''sale''), the entity would only be reporting once on each vehicle.

Comment: One state motor vehicle administration and other commenters asked that insurance carriers report more frequently. That state motor vehicle administration noted that ''if a vehicle is damaged on the 5th day of the month and the insurance carrier has already sent [its] file for the month, the state will not know of the damage until the following month's update.'' Several commenters representing nearly every stakeholder group noted that it was important for the reporting into NMVTIS to be timely, ideally in ''real time.'' Experian Automotive commented

that a monthly reporting requirement would be slower than the current industry practice for insurers.

Response: The 16-year-old language of the Anti-Car Theft Act is no longer consistent with business practices in an electronic age. Nonetheless, the language of the Anti-Car Theft Act provides no flexibility with regard to this reporting requirement. DOJ does strongly encourage, however, that all reporters provide data to the system as quickly as possible, preferably within 24 hours of acquisition, determination, or other reporting trigger. DOJ expects to highlight such reporting efficiencies and stakeholder participation on its official NMVTIS site, *www.NMVTIS.gov.*

7. Third-Party Reporting and Reporting Exceptions

Comment: Two commenters argued that an exception allowing junk- and salvage-yard reporting to occur through a state titling agency was flawed. One of these commenters suggested that all junk and salvage yards should be required to report directly into NMVTIS. The NADA also commented that allowing this exemption would only serve to create a loophole, particularly in cases of conflicting definitions among the states and between states and the Anti-Car Theft Act. Instead, NADA suggested allowing an exemption in cases where an insurance carrier reports to a third party that has no definitional restrictions, such as the NICB, that can transmit the information to NMVTIS without concern for conflicting definitions.

Response: While DOJ will take steps to ensure data integrity and quality, it would be unreasonable to prevent third-party reporting. Ultimately, insurance carriers and junk and salvage yards are responsible for their compliance with the Act, including the reporting of required information. These reporters must ensure that they are compliant with the reporting requirements for every vehicle handled. If such reporters cannot be certain of a third party's ability to provide the required information into NMVTIS, the reporter must report through a different third-party provider. Additionally, certain states require this reporting, and therefore, a duplicate reporting structure would continue to exist even if DOJ did not allow junk or salvage yards to report through states. For purposes of clarification, however, the Anti-Car Theft Act does not provide a specific exemption for insurance carriers to report through states, as it does for junk- and salvage-yard operators. Instead, DOJ has provided an exemption for insurance carriers to report to NMVTIS through an identified third party that is approved by the system operator. DOJ and the operator have attempted to identify potential third parties that can report to NMVTIS who already receive this type of information from insurance carriers and junk- and salvage-yard operators.

Comment: ARA commented that pursuant to the Act, ''junk and salvage yard operators are not required to report on a vehicle when they are issued a verification stating that the automobile or parts from the automobile are not reported as stolen.'' ARA argued against the exemption's implement on the grounds that the exemption is ''completely unworkable'' without time limits on the verification and other controls, and because the exemption creates a ''significant loophole that could foster additional illegal activity.''

Response: Pursuant to the Anti-Car Theft Act, a junk or salvage yard that is issued a verification under 49 U.S.C. 33110 stating that an automobile or parts from that automobile are not reported as stolen is not required to report to NMVTIS. Therefore, the Department has retained this exemption from NMVTIS reporting in these regulations.

Comment: The ARA commented that it appreciates attempts to exempt reporting by junk and salvage yards that already report to a third-party organization that is sharing its information with NMVTIS. The ARA further commented, however, that yards not currently participating with a cooperating third party will need a separate reporting mechanism that is labor efficient and economical in order to report NMVTIS information.

Response: DOJ agrees. The operator will designate at least three third-party organizations that have expressed a willingness to share with NMVTIS information that they receive from insurers and junk and salvage yards. In addition, DOJ will endeavor to identify a reporting mechanism that is ''sector'' and ''stakeholder'' neutral. Third-party providers need to be identified who will provide the information to the stakeholders or allow such third-party providers to charge a nominal fee for collecting and reporting the information on behalf of junk and salvage yards. DOJ hopes to identify providers that do not charge fees, but this is difficult with sector-or stakeholder-neutral providers.

Comment: Several state motor vehicle administrations commented on the third-party exemptions provided in the proposed rule. One state motor vehicle administration commented that it currently has some but not all of the information required for junk and salvage reporting. The state suggested that it does not have the resources available to accept and report all of the information required from junk and salvage yards. Another state motor vehicle administration made a similar point and stated that the requirements effectively establish an inefficient dual-reporting requirement. Another suggested that the phrase ''or cause to be provided on its behalf'' be clarified so that it is clear that states do not have a responsibility to report insurance, junk, or salvage information to NMVTIS on behalf of these organizations. The State of New York commented that it receives reports from junk and salvage yards in paper, that it does not process all of the reports received, and that the processing time may be beyond the reporting timeframes required of junk and salvage yards. Another asked that entities reporting to states as their chosen method of compliance be required to certify that they are meeting their reporting requirements by reporting to a specific state or states.

Response: A state's willingness to make such alterations to accommodate third-party reporting is strictly voluntary. Junk and salvage yards in states that cannot accommodate third-party reporting as required by the Anti-Car Theft Act and the rules will have other options for compliance reporting. While DOJ is committed to avoiding inefficient processes, DOJ is not able to eliminate data fields for the sake of efficiency alone and is not willing to impose additional requirements on the states to expand data collection and reporting on behalf of junk- and salvage-yard operators.

Comment: ASPA commented that while the proposed rule allows states to share junk and salvage information with NMVTIS, the inclusion of this data in state title information systems would be based on the state's definition of ''salvage'' and ''junk'' vehicles. ASPA questioned how the state would report data that it may not have because that state does not require submission of that data.

Response: The rule requires that junk- and salvage-yard reporting by or through states must include all of the data that junk- and salvage-yard operators are required to report. State definitions of ''salvage'' or ''junk'' do not alter a junk-or salvage-yard operator's responsibility to report vehicles in its inventory. If junk- and salvage-yard operators are not reporting all of the required data to the state, or the state is not able to report all of the data to NMVTIS as required of the yard, the junk or salvage yard must report independently of the state.

Comment: ASPA contended that the provisions of the proposed rule with regard to the direct-reporting exemptions for junk or salvage yards that already report inventories to the states appear to conflict with the wording of the statute that ASPA described as ''only requir[ing] the reporting of acquisition'' of such vehicles.

Response: The Act specifically spells out what information is to be reported by junk and salvage yards and requires junk and salvage yards to report more than the mere acquisition of the vehicle.

8. Total Loss Definition/Fair Salvage Value

Comment: One commenter expressed concern at the reference to ''fair salvage value.'' Any vehicle with a high salvage value will be totaled with a lower damage appraisal, and any vehicle with a low salvage value will be totaled with a high damage appraisal. The commenter noted that without uniformity as to the assignment of the salvage declaration, consumer protection cannot be guaranteed. The commenter argued for a more uniform definition of total loss that is not driven by the salvage value, noting that ''[t]his proposed market assessment of the vehicle value can either make or break the rule.'' Others commented positively on the use of a ''value-based'' definition.

Response: DOJ used this reference because it was required by the Anti-Car Theft Act. DOJ understands that there are different ways or bases for determining total loss, and that different stakeholders may argue for different standards based on their interests.

Comment: Nationwide Mutual Insurance Company commented that Congress specifically granted the DOJ authority to collect information from insurers on vehicles that such insurers have ''obtained possession of'' and determined to be ''junk automobiles or salvage automobiles.'' Nationwide further commented that ''[i]t is not logical that declaring a vehicle a total loss should trigger reporting of the total loss automobiles as salvage and/or junk. The determination of [a] vehicle as a total loss can be based upon other economic considerations not reflective solely on the actual cost of reporting the vehicle. Therefore, we assert that the inclusion of total loss information in the proposed rule is inconsistent with our understanding of the intent of the statute.''

Response: DOJ disagrees. DOJ is mandated to require reporting of ''salvage'' vehicles, which DOJ has determined to include those vehicles determined to be a ''total loss.'' DOJ recognizes that, in certain circumstances, the decision to declare a vehicle a ''total loss'' may be based on other determinations, such as the fact that a vehicle has been stolen. To address this issue, insurance carriers are strongly encouraged to include with ''total loss'' reporting the primary reason for the determination. Doing so not only would provide a better position for insurance carriers, but it also would allow the consumer to be aware of the specific circumstances for the determination. DOJ does not agree that ''obtained'' should be defined in such a limited way to include only ownership.

Comment: Nationwide Mutual Insurance Company commented that DOJ should clarify the definitions of junk and salvage by requiring insurers to report on those automobiles titled as ''junk'' or ''salvage'' under the laws of the state where the insurer obtains title to the motor vehicle.

Response: DOJ disagrees and notes that not even half of the states require such titles or brands (see Texas's comment below). Such a definition, therefore, would create a significant loophole that would be counter to the consumer-protection intentions of the Anti-Car Theft Act.

Comment: The State of Texas Department of Transportation commented that '' 'Total loss' is not a term used in Texas salvage motor vehicle law and has no bearing on whether a vehicle is determined to be a salvage vehicle. A vehicle can be considered a 'total loss' by an insurance company, but not be branded as salvage because the vehicle does not meet the definition of salvage in the title state. * * * Use of this term could be problematic if NMVTIS shows a vehicle as a total loss and the Texas records indicate nothing.''

Response: The requirement for insurance carriers to report ''total loss'' information is put in place for exactly this reason—vehicles that are salvage may not be branded as salvage by many states. To resolve this discrepancy, NMVTIS blends reported information from multiple sources so that prospective purchasers are aware of the vehicle's true history and can avoid being defrauded and placed in an unsafe vehicle. The presence of ''total loss'' information in the absence of a state salvage brand will need to be explained by portal providers, so that prospective purchasers (and others) are aware of what the apparent discrepancy means, and how it occurs. DOJ does not expect states to take any action based on this information that is not authorized in state law and does not believe that it was the intention of the Anti-Car Theft Act to require them to do so.

Comment: Several insurance-related associations commented that ''[t]he statute requires that insurers report junk and salvage automobiles, yet the regulation would require reporting of 'total losses,' a term that would include some automobiles that are not junk or salvage. It is axiomatic that a regulation cannot expand the limits of a statute, and especially if in doing so, the regulation imposes added burdens and costs. Not only is such expansion inconsistent with the underlying statute but there is also nothing in the Court's order in *Public Citizen et al.* v. *Michael Mukasey* that mandates or authorizes any such expansion of the statutory definition of automobiles to be reported.''

These commenters further noted ''that the statutory definitions of 'junk' and 'salvage' in 49 U.S.C. 30501 are not used by most state or insurance carriers. To enable consistency with the existing state laws and data systems and thereby to expeditiously implement NMVTIS, we request that the last sentence of Section 25.55(a) be amended to read in the final regulation: 'An insurance carrier shall report on any automobile that it has determined to be a junk or salvage automobile under the law of the applicable jurisdiction.' This approach makes sense because since the Congress enacted this statute in 1992, most states have defined the meaning of 'junk' or 'salvage.' These state laws represent the best understanding of these terms today. Requiring their use by regulation would implement the spirit of the law in a practical way. Data reported by insurers in this manner will also be consistent with data reported by the states.''

Opposing this view, consumer-advocate litigators commented that ''[t]he Insurers comment that 'any expansion via regulation of the categories of automobiles for which reporting is mandated * * * would be unauthorized. * * *' However, they do not suggest that it is outside the scope of the Department's authority to provide construction for such terms in the statutes. It is obviously the duty and the province of the Department to use its broad discretion in construing these terms.'' The consumer-advocate litigators further commented that the rule's enabling of electronic reporting through third parties that may already have access to the data addresses the need for reporting in the least-burdensome and least-costly fashion. These commenters further argued that ''[t]he Insurers take issue with the Department's proposal to provide that a vehicle treated as a total loss is deemed

a salvage vehicle. However, it is squarely with the Department's province to make the determination that the fact that a vehicle has been treated as a total loss indeed is evidence that it is a 'salvage' vehicle, and that both legally and practically the vehicle is a 'salvage' vehicle. Similarly, it is necessary, in carrying out the clear protective purposes of the statutes, that this construction be given to these terms. * * * The Insurers next propose amending the last line of § 25.55(a) to state 'An insurance carrier shall report on any automobile that it has determined to be a junk or salvage automobile under the law of the applicable jurisdiction.' Such a change would incorporate the limitation they seek of disregarding total loss vehicles. It also appears to be an attempt to require that state definitions of 'junk' or 'salvage' be *substituted* for the definitions in the statutes, rather than *additional to* and supplementary of them. That would be entirely improper, of course, defeating the central purpose of providing a national definition of 'salvage' that sets a *floor* for reporting, not a *ceiling.*'' These commenters further noted the ''extraordinary patchwork of state laws regarding title 'brands' and even the terms used for labeling 'salvage' or 'total loss' vehicles. The uniform minimal reporting standard provided by the NMVTIS statutes is of critical importance.''

Response: DOJ agrees that it possesses authority and responsibility to provide the definition of these terms. Additionally, in order to meet the requirements of the Act with regard to providing prospective purchasers with the information needed to make an informed purchase decision, and in order to inform state title administrations and law enforcement of that vehicle's history, full disclosure of total-loss information is needed regardless of a state's action or inaction on that vehicle.

Comment: Several insurance-related organizations and associations commented that ''[s]ection 25.55(a) states that the insurer must report automobiles that it has obtained 'possession of *and* has decided are junk automobiles or salvage automobiles.' The term possession is not clear. To be workable, 'possession' should be construed as 'the titled owner' as represented on the certificate of title, because insurers would only be able to report on those automobiles to which they are titled owners. Otherwise, they do not record 'possession' of automobiles and could not report them.''

The insurance-related organizations further commented that ''[r]eplacing 'possession' in the regulation with 'titled owner' would also be workable and consistent with the remainder of the sentence which requires that insurers must report automobiles which they possess *and* have decided they are junk or salvage automobiles. Both the 'possession' and 'decision' are manifested by re-titling, which is reportable by insurers in an efficient manner. Therefore, the language would read, 'a report that contains an inventory of all automobiles of the current model year or any of the four prior model years, that the carrier during the past month is the titled owner and has decided are junk automobiles or salvage automobiles.' ''

Opposing this view, several consumer-advocate litigators commented that while the term is not clear and needs construction in furtherance of the protective purposes of the statute, they disagreed with the insurers' proposed substitution of ''is the titled owner of'' for ''has obtained possession of'' in section 25.55(a). These commenters further noted that the effect of the insurers' comments would be to ''eliminate any reporting requirement of salvage vehicles by insurance carriers whatsoever for all but those vehicles that they do in fact actually title in their name. There are innumerable reasons why, and methods by which, they may legally in many instances not obtain titles to salvage vehicles in their names under the existing hole-laden patchwork of state laws. In addition, if this change were made, and if they blatantly violated a state law by failing to get a salvage title issued in their names, they would appear not to be in violation of the federal law by not reporting to NMVTIS, because they would not have been the 'titled owner.' The opposite construction of 'possession' is crucial. In fact, the very example they provide of a salvage vehicle that comes into their possession but that they do not title shows how NMVTIS *should* work to be effective: They should report such vehicles. If there are multiple reports on the same vehicle, there is no harm done; but if such salvage vehicles are not reported, there is every harm done.'' Other consumer advocates commented that ''possession'' should be defined to include both actual and constructive possession and should include exercising control over an automobile directly or indirectly.

Response: Limiting insurance reporting to those vehicles owned by insurance companies would create a large loophole through which total-loss or salvage vehicles would remain under ''clean title.'' Such a loophole was clearly not intended to exist under NMVTIS, and in order to provide consumer protection against fraud, insurance carriers must be required to report on all vehicles that they determine to be a total loss.

Comment: Several insurance-related organizations and associations commented that ''[s]ection 25.55(b) sets forth the mandatory data elements. We believe that applying the following interpretations will allow a reporting system to be put in place that complies with all aspects of the statute, including the 'least burdensome and costly' directive and that can reasonably meet the Court's deadline in *Public Citizen et al.* v. *Mukasey*.

''a. VIN. This can be reported.

''b. The date on which the automobile was obtained or designated as a junk or salvage automobile. Again, interpreting this requirement to mean the date on which the automobile was re-titled 'junk' or 'salvage' comports with legal and practical considerations and would be most cost effective.

''c. The name of the individual or entity from whom the automobile was obtained or who possessed it when the automobile was designated as a junk or salvage automobile. Again, as set forth above, the only cost effective way for insurers to meet this obligation is to construe it to mean the name of the insurer when the automobile was re-titled. Providing the name of the individual or entity from whom the automobile was obtained does not provide useful information to law enforcement or consumers.

''d. The name of the owner of the automobile at the time of the filing of the report. In most instances, this will be the buyer of the salvage or junk automobile, or the insurance company when the insurance company retains ownership, for instance to crush a junk vehicle.''

Opposing this view, several consumer-advocate litigators commented that the insurers suggest 'that the regulations should provide that they do *not* have to report the name of the person from whom a salvage vehicle was obtained. This is directly contrary to 49 U.S.C. 30504(b)(3). The ownership trail of all of these vehicles is critical for law enforcement and consumer investigative purposes, and Congress noted that by writing it into law.''

The consumer-advocate litigators further commented that ''[t]he Insurers also suggest that the 'owner of the automobile at the time of the filing of the report' would normally be the buyer of the salvage vehicle, and would only be the insurance carrier if it retained

ownership to crush a vehicle. I submit that it is important that both the buyer and the insurance carrier be identified under the regulations.''

Response: DOJ agrees with the comments of the consumer-advocacy organizations and has retained the total-loss reporting requirements that were included in the proposed rule.

Comment: Several commenters, including the NADA, ARA, Experian Automotive, the National Salvage Vehicle Reporting Program, insurance services organizations, consumer advocate attorneys, and others, expressed strong support for DOJ's ''modernization and clarification of language found in the Anti-Car Theft Act related to salvage and junk vehicles, to include within this the requirement to report on all total loss vehicles, including those recognized by the state and those not recognized by the state but determined a total loss by an insurance carrier.'' Several of these commenters also pointed out that many total-loss vehicles do not receive salvage brands due to varied and unreliable state definitions and criteria. Relying on state definitions of ''salvage,'' therefore, would be highly inconsistent, would perpetuate fraud and theft, and would fail to accomplish the objective. Comments submitted by Amica Mutual Insurance Co. underscore the need to collect ''total loss'' data. Such data provides additional consumer protection, potentially decreases fraudulent activity, and reduces the number of unsafe vehicles in the marketplace.

Response: DOJ agrees with these comments.

Comment: The NADA, ARA, National Salvage Vehicle Reporting Program, several national consumer-advocacy organizations, and other organizations commented that the proposed rules fail to require insurance carriers to report all vehicles that they declare a total loss, including those retained by insureds. Often, individuals who retain possession of their ''total loss'' vehicle can avoid disclosure, or they may not apply for salvage titles. The NADA commented that the final rule should be revised to eliminate the concept of possession and instead focus on those insured motor vehicles that the insurance company declares, or the applicable jurisdiction defines, to be a ''total loss.''

Response: DOJ disagrees that the proposed rule puts such a limitation in place. DOJ requires that insurance carriers who declare a vehicle a total loss and allow the insured to retain the vehicle must still be required to report such declarations.

Comment: The NADA commented that ''total loss'' should be defined broadly to capture all total-loss vehicles. ''The final rule should not define 'total loss' in Section 25.52, but rather should define 'total loss motor vehicle' as 'those motor vehicles determined to be a total loss under the laws of the applicable jurisdictions and those designated as a total loss by each insurance company under the terms of its policies.' ''

Response: DOJ appreciates this clarification and agrees that ''total loss'' includes all total-loss vehicles.

Comment: ASPA commented that ''[w]hen an automobile is classified as a total loss by an insurance company, it does not necessarily mean that the automobile is a 'salvage automobile.' On page 54546 of the **Federal Register**, in Section 2 'Insurance Carriers,' the explanation of the Proposed Rule expands the definition of 'salvage automobiles' when it states: 'For purposes of clarification, the Department of Justice has determined that this definition [salvage automobiles] includes all automobiles found to be a total loss under the laws of the applicable jurisdiction or designated as a total loss by the insurance carrier under the terms of its policies.' ''

''In common usage, 'salvage' is not synonymous with 'total loss.' There are many circumstances in which an insurance company may declare a vehicle a 'total loss,' but the vehicle does not meet the 'salvage' definition of the relevant state. If a stolen vehicle is not recovered quickly, the insured may be paid for the missing vehicle. If the vehicle is later recovered in a largely undamaged condition, the vehicle, although a 'total loss' due to its late recovery, may not meet the relevant 'salvage' definition and, often, is sold by the insurer with a 'clear' (*i.e.,* not branded) title. The definition in the Proposed Rule lumps this undamaged theft recovery into the 'salvage' definition, thus devaluing the vehicle and, again, creating confusion about the applicability of the laws of the relevant state.''

ASPA further commented that ''[m]ore generally, pursuant to 49 U.S.C. 30501(7), 'salvage automobile' is clearly defined as 'an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage.' This definition is both clear and unambiguous on its face and, therefore, requires no 'clarification.' ''

''In the Proposed Rule, the DOJ is attempting to expand the definition of salvage automobile '[f]or purposes of clarification' to include automobiles determined to be a total loss under the law of the applicable jurisdiction or designated as a total loss by the insurer under the terms of its policies. We contend that this significant expansion of the definition is not necessary, and that the proposed definition actually contradicts accepted custom and usage within the insurance and salvage industries.

''The DOJ's proposed amendment to the definition of salvage automobile would subject many clear title automobiles to the reporting requirements of NMVTIS. This is problematic, and is clearly not what Congress envisioned when it created the definition for salvage automobile. In *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), the Court implemented a two-part analysis to determine the appropriate standard of review towards a government agency that attempts to amend statutory language. Here, since the current definition of salvage automobile is not ambiguous, the proposed 'clarification' by the DOJ is not based on a permissible construction of the statute and should not be allowed.''

Response: DOJ disagrees. Total-loss vehicles are just that—a total loss—at the time the determination is made. Total-loss vehicles fall within the definition of ''salvage'' and must be reported. In response to other comments, DOJ notes that insurance carriers are strongly encouraged by the final rule to report to NMVTIS the primary reason for the determination of total loss, addressing this commenter's concerns specifically and providing much-improved disclosure for consumers.

Comment: One submission argues for ''the necessity of all states to adhere to the Uniform Certificate of Title Act.'' ''If the state has a different definition of a Salvage vehicle the branding now becomes an arbitrary issue.''

Response: The Uniform Certificate of Title Act and the benefits of uniform titling procedures aside, the Anti-Car Theft Act does not require States to adopt standard brand labels or definitions. NMVTIS has a process in place to record each state's unique brand label and to relate it to one of the 78 brand types used in the NMVTIS database. The state's brand labels and definitions remain unchanged in NMVTIS.

9. Chain of Custody/Names of Those Who Provided/Those Who Purchased

Comment: One commenter noted that ''[t]he reporting requirement of the junk and salvage yards may need some change. There are many different routes for a vehicle to come into a yard, very often it is not by the 'owner of record' or the titled owner. A more definitive approach to recording the information of the entity placing the vehicle into the salvage yard should be taken, more identifying information regarding the entity placing the vehicle into the salvage yard should be captured. * * * How does the system handle this in a manner that will notify the title State of a cancel record and provide a bona-fide chain of events leading to the yard?''

Response: The reporting requirement for junk and salvage yards applies to every vehicle regardless of what ''route'' it took into the yard or who brought in the vehicle. Further, it is the responsibility of the junk or salvage yard to provide, among other data, the name of the individual or entity from whom the automobile was obtained. The NMVITIS reporting requirements do not affect existing state-level requirements for junk- and salvage-yard operators to provide states with a notice of title or record cancellation and any data fields required in such notifications. NMVTIS will not issue such notifications to states, but states will be able to view the reported salvage- or junk-yard status of any vehicle at any time. With the cumulative vehicle histories constructed in NMVTIS, states and law enforcement can identify the ''chain of events'' with reliability once there is full system participation.

Comment: One commenter noted that ''stolen'' designations or notifications sometimes are not made when a vehicle is first reported stolen. In these instances, the commenter suggested that law enforcement may receive a false negative response on a stolen check due to this delay. The commenter suggested that the system provide a notification to law enforcement officers filing a report on a stolen vehicle that a prior stop and ''stolen'' check was made on the vehicle, providing notification and an investigative lead to the reporting officer of where the vehicle was stopped and who made the stolen inquiry. Another commenter noted that stolen-vehicle information is not required to be in NMVTIS, and nothing in the regulations requires a state to check NCIC before issuing a title.

Response: NMVTIS is not intended or expected to replace the information or services available to law enforcement through NCIC. NCIC is and will remain the primary system used and relied upon by local law enforcement to check the ''stolen'' status of a vehicle. NMVTIS's capturing of ''stolen'' status and history information is to inform state titling agencies and others who may not have access to NCIC that a vehicle was at one time reported as ''stolen.'' Stolen vehicle information is included in NMVTIS via NICB so that states that do not have access to NCIC can be apprised of a vehicle's questionable status before issuing a new title.

Comment: The National Auto Auction Association commented that ''NMVTIS should include lien holder names and license plate numbers'' for various reasons.

Response: While DOJ will authorize the operator to seek additional information for NMVTIS as may be necessary to accomplish program goals, DOJ will not require these data fields to be included in NMVTIS.

Comment: The National Auto Auction Association commented that DOJ should clarify in the final rule whether data maintained in the NMVTIS central file is to be considered the official legal record of a jurisdiction's data.

Response: The official record for any vehicle will be determined by the state. However, NMVTIS is expected to be a reliable source of title information that users can rely on to make decisions.

10. Brand Definitions

Comment: One commenter asked, ''[h]ow is the branding procedure determined? Is there a preexisting national standard for what brands exist and how a vehicle is classified under such brands or is the determination made on a state-by-state basis? If the standard is national (which would make sense given the national objective), maybe a list of definitions of the applicable brands should be placed in the rule's definition section.'' Another commenter noted that the development of standardized definitions and brands for all states would be extremely beneficial in ensuring that the intent of NMVTIS is fully recognized. Several state motor vehicle administrations pointed out that the definitions of ''salvage'' and ''total loss'' in the proposed rule are different from state definitions. Another commenter noted that to add information based on the definitions in the proposed rule will conflict with State definitions of brands, compromise the integrity of the NMVTIS database, and reduce the value of the information in the database.

Response: NMVTIS does not affect state branding procedures, and the Anti-Car Theft Act did not require a national standard for branding. Although differing definitions may create complexity in deciphering a vehicle's brand history, NMVTIS will accept any official state brand and will share that brand with other states, thereby relating that brand to a brand type or ''NMVTIS Brand.'' Users of NMVTIS will notice state brands as well as a separate category for insurance, junk, and salvage information, if any is available. The differences in these reporting streams also will be defined so that users will know if a vehicle has been or is a junk or salvage automobile by virtue of a state brand indicating such, or by an insurer's determination that the vehicle was a total loss. Consumers and others also will be advised if a vehicle has been in the possession of a junk or salvage yard. Information is reported by multiple data sources and is reported in a segregated fashion with links for explanations.

Comment: ASPA provided the following example as evidence of the problems that would be created by the proposed rule: ''Michigan's salvage law covers current model year passenger vehicles and those of the preceding five model years. Therefore, a 2002 passenger motor vehicle does not become a 'salvage vehicle' or a 'scrap vehicle' in Michigan, regardless of the fact that the vehicle has been damaged and 'totaled' by an insurance carrier. In this situation, Michigan, when reporting to NMVTIS, presumably would not include the car in the state's branded title submissions. An insurance carrier reporting to NMVTIS presumably would not include the car because it is outside of the age limitations applicable to insurance carriers. However, a salvage yard or junk yard, using the definitions in the Proposed Rule, presumably would report the vehicle as a 'salvage automobile' or a 'junk automobile,' when reporting to NMVTIS. So, for a state or other inquirer of NMVTIS, NMVTIS will show that the vehicle has a salvage or junk history. This occurs regardless of the fact that the relevant state did not deem the vehicle salvage or scrap.''

Response: This comment offers an excellent example of how NMVTIS reporting will fill the holes that currently allow salvage or junk vehicles to remain unbranded, creating opportunities for theft and consumer fraud.

11. Brand Washing

Comment: One commenter asked ''if brand information is already collected by states, how exactly would brand 'washing' occur? If the retitling state

checks the title of the previous state wouldn't that information be included with the title?'' Another commenter recommended that NMVTIS retain a prior state's brand history even when a state does not accept a previous state's brand.

Response: Brand histories or designations are not always carried forward by the states. Retitling states do not necessarily check with the previous states before issuing a new title. In some states, the paper title from the previous state of record is accepted as the basis for the new title to be issued. Because of the reliance in some states on paper titles as evidence of prior titling history, and because not all states check with the prior states of record, brand washing occurs regularly. NMVTIS will create a nationwide brand history for every vehicle, requiring that all states check with NMVTIS rather than simply relying on paper documentation. Brand washing will be significantly reduced, if not eliminated. A state's decision not to acknowledge a prior state's branding will not affect the NMVTIS brand history.

12. Self Insurers Included in the Definition

Comment: Several commenters expressed disappointment that self insurers were left out of the rule. One commenter noted that the definitions should encompass a ''self insurer,'' be it a municipality, lease company, or large corporation, and that this is a current ''hole'' in the system.

Response: DOJ agrees that the Anti-Car Theft Act's definition of ''insurance carrier'' includes entities that underwrite their own insurance, such as certain rental car companies. The definition, however, excludes any organization that does not underwrite its own insurance.

13. Salvage Automobile Defined

Comment: One commentator noted that the definition of a ''salvage automobile'' should also include any automobile that an insurance company has taken ownership of in settlement of a claim and any vehicle that a state has issued a title to an insurer for. Another commenter noted that ''[t]he responsibilities of the insurance carriers should include, in the area of the reporting, if the insurance company obtained a title from the state in their name, the state in which they obtained it and the type of title.'' Several consumer-advocacy organizations commented that every automobile obtained by a salvage yard or junk yard that the salvage yard or junk yard knows, or has reason to know, has come from an insurance carrier, or from any person or entity in connection with the resolution of insurance claims, should be deemed as a salvage automobile or junk automobile and must be reported as such. These commenters suggested that the rules should provide for a presumption that any automobile obtained or sold by a salvage or junk yard, and that has known unrepaired wreck or flood damage, is either a salvage automobile or junk automobile, and that such a vehicle must be reported as such. Similarly, the rules should include a presumption that any automobile obtained or sold by a salvage yard or junk yard, without knowledge as to the automobile's physical condition, is either a salvage automobile or junk automobile, and must be reported as such. This would prevent salvage yards or junk yards from maintaining an ''empty head'' to avoid compliance. The commenters suggested that ''these presumptions (as to automobiles not obtained from insurers) can be overcome if and only if the salvage or junk yard has qualified appraisal personnel employees or others acting solely on its behalf, entirely independent of any other persons or entities, perform a good-faith physical and value appraisal of the automobile and determine that the automobile does not meet the definition of 'salvage' or 'junk.' ''

Response: Based on the proposed rule, a ''salvage auto'' is defined as ''an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage.'' 49 U.S.C. 30501(7).

For purposes of clarification, the Department of Justice has determined that this definition *includes* all automobiles found to be a total loss under the laws of the applicable jurisdiction or designated as a total loss by the insurance carrier under the terms of its policies. By definition, this would mean that every automobile obtained by a salvage yard or junk yard that the salvage yard or junk yard knows, or has reason to know, has come from an insurance carrier, or from any person or entity in connection with the resolution of insurance claims, should be deemed as a salvage automobile or junk automobile and must be reported as such. DOJ does not agree that any automobile with unknown damage or any automobile obtained without knowledge of its physical condition should be considered a junk or salvage automobile. DOJ agrees that a junk or salvage yard may be excepted from reporting any vehicle that a qualified independent appraiser determines does not meet the definition of a salvage or junk automobile. This determination by the appraiser must be in writing and made after performing a good-faith physical and value appraisal. Although not required, the Department recommends that junk and salvage yards retain the reports and written appraisals for a period of ten years from the date of the report. Additionally, a salvage auction or salvage pool that does not handle any vehicles from or on behalf of insurance carriers is categorically exempted from this rule until such time as they may handle a vehicle from an insurance carrier.

Comment: One commenter noted that the lack of common terms will undermine the clarity and usefulness of the information provided: ''How will NMVTIS reconcile the differences in law as to what constitutes a 'total loss?' How will this undermine or effect achievement of NMVTIS'[s] goals? How will NMVTIS reconcile the differences amongst insurance company policies as to what constitutes a 'total loss?' How will this undermine or effect achievement of NMVTIS'[s] goals?'' The West Virginia Department of Transportation also commented that the rule should establish a standard for establishing total loss as opposed to relying on the rules of insurance carriers and states.

Response: NMVTIS will not attempt to ''reconcile'' differences in definitions. Rather, NMVTIS recognizes that different definitions and criteria are in place within different insurance companies and states. NMVTIS accepts these ''native'' determinations and notifies users that ''X company'' or ''X state'' has made a determination that the vehicle is a ''total loss,'' ''salvage vehicle,'' etc. NMVTIS will provide all users with full disclosure and explanation on the differences in definitions and determinations and how this may or may not affect a vehicle. NMVTIS's mandate is to notify users of the determinations made in a vehicle's history, not to make such determinations uniform or conforming.

14. Junk Yard Definition

Comment: ISRI commented that it objects to the presumption in the rule that vehicle recyclers operate only one of two things, a ''junk yard'' or a ''salvage yard,'' and suggests that DOJ clarify the full scope of entities to be included under the general heading of ''junk or salvage yards.''

Response: While DOJ relied upon the language in the Anti-Car Theft Act to describe the category of required entities, DOJ acknowledges that the terms do not adequately reflect the professional and varied nature of the vehicle-recycling industry. In general terms, any entity that owns, controls, handles, or acquires salvage vehicles is included in the reporting requirements of this rule, which is consistent with current business practices. Similarly, scrap-vehicle shredders, scrap-metal processors, ''pull- or pick-apart yards,'' salvage pools, salvage auctions, and other types of auctions handling salvage vehicles (including vehicles declared a ''total loss'') are included in the definition of ''junk or salvage yards.''

Comment: ISRI also requested that new definitions of ''scrap vehicle,'' ''scrap-vehicle shredder,'' and ''scrap-metal processor'' be added to the rule to exclude these entities from the reporting requirement.

Response: DOJ has clarified the rule, but rather than eliminate the reporting requirements for these entities, DOJ revised the regulations to establish an exemption that would cover prohibitive reporting circumstances that these entities face.

Comment: One commenter argued that the definition of ''junk yard'' is too broad and may unnecessarily include used car dealers and others who may rebuild vehicles with the intention of reselling them. The commenter suggested that having such entities report these vehicles into NMVTIS would potentially label these vehicles as ''junk or salvage'' and preclude the vehicles from being retitled in some states.

Response: One of the main purposes of NMVTIS is to provide prospective purchasers and others with reliable histories of a vehicle's previous and current condition as it relates to salvage and loss. Vehicles reported as having been in the possession of a ''junk'' or ''salvage yard'' may not be viewed in the same way that vehicles with a ''junk'' or ''salvage'' brand may be viewed in state titling processes. Each state will continue to make its own determinations regarding vehicle titling based on state law. Although any individual or business engaged in the business of acquiring ''junk'' or ''salvage'' automobiles (which includes motor vehicles determined by an insurance carrier to be a ''total loss'') generally must by law report such vehicles to NMVTIS, there are two exceptions to this requirement. First, an automobile that is determined to not meet the definition of salvage or junk after a good-faith physical and value appraisal conducted by a qualified independent appraiser is not required to be reported. Second, DOJ has added a clarification that individuals and entities that handle less than five salvage or total-loss vehicles per year need not report under the salvage-yard requirements, which is consistent with existing standards that used car dealers are familiar with.

Comment: Many commenters, including Iowa Attorney General Thomas J. Miller, noted that the inclusion of salvage pools in the reporting requirements for junk and salvage yards ''will help close a significant loophole'' and will ''further deter fraudulent used car sales, vehicle theft,'' and other crimes.

Response: Requiring salvage pools or auto auctions to report on salvage or insurance claim vehicles will increase the effectiveness of the program, ensuring that consumers and others are not defrauded by sellers who conceal salvage or ''total loss'' histories.

Comment: Several commenters, including the ISRI, the Virginia Department of Motor Vehicle Administrators, and other industry associations and representatives, commented that the proposed rules do not clearly indicate that scrap-metal processors, shredders, pull-apart yards, and others who often receive and demolish many end-of-life vehicles are included in the reporting requirements.

Response: The regulations have been revised to clarify that the definition of junk and salvage yards includes not only salvage pools, but also scrap-metal processors, shredders, pull-apart yards, and others who handle or control total-loss, junk, or salvage automobiles, otherwise described as end-of-life vehicles.

Comment: ASPA commented that DOJ should recognize that VIN inspections conducted in most states would make a salvage automobile an unattractive choice for criminals, and that cloning a salvage vehicle would result in the cloned vehicle having a ''salvage'' branded title.

Response: DOJ recognizes that some states require vehicle inspections upon retitling, and some states place a ''brand'' on salvage vehicles. In these states, a salvage vehicle may not make an attractive choice for VIN cloning. However, not every state has these requirements, and VIN inspections typically do not inspect or verify hidden VINs. As a result, cloned vehicles go undetected. Even electronic diagnostic modules that would otherwise display the VIN can be defeated, allowing the clone to be virtually undetectable. Most often, the criminal activity that DOJ referred to in the proposed rule is related to total-loss or ''end-of-life'' vehicles that are purchased because they have a ''clean title'' that is then fraudulently connected with a stolen vehicle, which ''clones'' the stolen vehicle to the non-stolen, ''clean title'' vehicle. Because the non-stolen vehicle was destroyed and sold to an individual, it no longer appears on the road and no notification of its destruction may be made to the current state of title.

Comment: Copart, Inc. argued that because salvage pools do not own the vehicles sold at salvage pools or auto auctions, and therefore by definition do not ''resell'' them, they do not meet the definition of salvage yard and are therefore not required to report. Copart further contended that salvage pools should be required to report only those vehicles that they purchase for resale, and that any other interpretation goes beyond the plain language of the statute.

Response: DOJ disagrees with this interpretation and notes that salvage pools do in fact handle and cause to be resold (on behalf of their current owner, who ''bought'' the vehicle from another) salvage and total-loss vehicles.

Comment: Copart, Inc. argued that salvage pools do not typically have access to the information needed to determine whether a vehicle meets the NMVTIS definition of junk vehicle or salvage vehicle. Copart further contended that junk and salvage yards should only be required to report to NMVTIS those vehicles sold on a salvage or junk certificate under applicable state law.

Response: Allowing junk and salvage yards to report only on vehicles with salvage titles would perpetuate the problems described elsewhere, including fraud and theft. Nonetheless, DOJ has addressed this issue in the definition of a ''salvage auto'' that now includes exceptions for vehicles that are not salvage, including total-loss vehicles.

Comment: Copart, Inc. argued that requiring salvage pools to report to NMVTIS is wasteful and duplicative because they function as an intermediary between other entities that are required to report, such as insurance carriers, dismantlers, and scrap-metal processors.

Response: Criminal organizations exploit salvage-pool services, purchasing total-loss vehicles with ''clean titles'' to facilitate the cloning and resale of stolen vehicles. To address this issue, law enforcement and other organizations require information on the vehicles handled by salvage pools. Additionally, many if not most vehicles

sold by salvage pools do not end up in a junk or salvage yard, and not all vehicles sold by salvage pools, including those with significant damage, are determined to be a total loss by insurance carriers. For these reasons, it is essential that salvage pools report to NMVTIS.

Comment: Copart, Inc. argued that DOJ should interpret ''junk yard'' and ''salvage yard'' to include all vehicle auction companies so as not to discriminate against ''salvage pools'' that sell both clean-titled and salvage vehicles.

Response: All vehicle auction companies should not be required to report on all vehicles handled or in their inventory. Instead, those organizations that handle or resell vehicles on behalf of insurance carriers after a determination of total loss, regardless of salvage title, should be required to report. This should hold true regardless of whether the entity operates as a ''salvage pool'' or refers to itself as an ''auto auction,'' ''salvage auction,'' ''abandoned-vehicle auction,'' ''tow-lot auction,'' ''scratch-and-dent'' sale or auction, etc. As the National Salvage Vehicle Reporting Program noted, ''the recommended guideline for determining that an entity is required to report * * * should be if the entity owns or acquires, [or handles] total loss/salvage vehicles in whole or in part.'' Under such circumstances, it should be required to report all vehicles to NMVTIS. DOJ will clarify this requirement in the final rule.

15. Salvage Brand

Comment: One commenter noted that ''[i]f the NMVTIS project is to succeed it would be a reasonable assumption to require a uniform approach to the assignment of the 'salvage' brand by any member state. The system is only as good as the data in it, if the data is not applicable to uniform situations there will always be discrepancies.''

Response: A uniform approach to branding would be advantageous in many respects. The Anti-Car Theft Act, however, does not provide the authority for DOJ to develop or mandate uniform branding, which would be a significant and potentially costly change for states to implement. As each state makes its own determinations, and NMVTIS relates state brands to an aggregated brand or brand category within NMVTIS, the non-uniform approach does not create an insurmountable problem. DOJ will ensure that those who access NMVTIS information have the opportunity to learn about the different state brands that exist and the impact of other reporting on these brands to create greater awareness and understanding of their meaning.

16. Definition of Automobile

Comment: NAEC argued that the rule should require the inclusion of ''trucks, SUVs and other non-automobiles as prescribed by the Federal Anti-Car Theft Act for Parts Marking'' because of their popularity with vehicle thieves. Other organizations, including the Idaho Transportation Department, contended that ''NMVTIS records should also include all vehicles that a state may title, and not be limited to standard types of vehicles.'' The Minnesota Department of Public Safety stated that if it is required to report on all vehicles in its database, ''it might well grind to a halt,'' and costs would increase considerably.

Response: Although DOJ cannot extend the Act's definition to include all motor vehicles, it is important to note that many states currently include such vehicles in their reporting to NMVTIS. DOJ strongly encourages this continued reporting practice in light of supporting comments, the value to law enforcement, and the need to protect citizens against fraud and theft. Moreover, it may be more costly or burdensome for states to filter out those vehicles not meeting the statutory requirement than to submit all motor vehicles to NMVTIS.

Comment: One commenter recommended that DOJ clarify when a vehicle is no longer a vehicle for purposes of reporting, especially in junk or salvage yards that often do not receive a complete vehicle.

Response: DOJ offers two clarifications in response to this comment. First, a vehicle is thought to be present for reporting purposes when a vehicle frame is present. Similarly, in cases where questions as to the ''true VIN'' of a vehicle arise, DOJ has determined that the true VIN for NMVTIS's purposes is the VIN on the frame of the vehicle.

State Responsibilities

17. Start Dates

Comment: In reference to the proposed June 1, 2009, start date for state reporting and inquiries into the system, several states and AAMVA noted that the states would have difficulty meeting this date. One state commented that ''[t]he requirement to budget, upgrade and work to complete compliance requirements for NMVTIS cannot be met by this timeline—it is simply not doable even with the political will and funds available. To arbitrarily select a date that is not workable in any manner is unfair and unrealistic.'' Other commenters noted that it would take time to accomplish the necessary statutory and regulatory changes that may be required, and that their states had not budgeted for NMVTIS and could not pay NMVTIS fees in light of current economic circumstances. AAMVA further commented that DOJ should establish a process for approving ''temporary exemptions from the deadline where a reasonable timeline for compliance is presented and approved by the Department.'' The State of California proposed a ''phasing in'' of participants. The dates proposed by states as alternative start dates ranged from 2010 to ''1 year from the date funding is secured'' by the state.

Response: Although DOJ has worked closely with the system operator to reduce the need for state system modifications, and although the requirements of the Act have been in place since 1992, DOJ understands that it will take time for states to implement some provisions of the regulation. To provide relief in this regard, DOJ has elected to extend the compliance date for states not yet participating to January 1, 2010. By this date, all states and the District of Columbia will be required to provide daily title transaction updates to NMVTIS, make inquiries into NMVTIS before issuing a title on a vehicle coming in from out-of-state, and paying any user fees that may be billed by the operator. The Department believes that the states can comply by that date. Similarly, DOJ has decided against a ''phasing in'' approach to state participation commencement because there is no equitable way of selecting phasing dates and participants in each phase. DOJ points out that most of the provisions required to be implemented by January 1, 2010, are essentially the same requirements that have been a part of the Anti-Car Theft Act since either 1992 or 1996, and states, therefore, have had at least 12 years to implement the provisions of the Act. Thirteen states have already done so without regulations in place.

Comment: One commenter noted that the proposed start date is just prior to an AAMVA-announced decision to continue as the operator of the system and therefore creates a conflict for states should AAMVA decide not to continue as the operator.

Response: AAMVA has assured DOJ that should a decision be made in August of 2009 to discontinue its role as the operator, AAMVA will continue to provide transition services and continuity until a new operator is identified and is able to assist states that

rely on NMVTIS in their daily operations.

Comment: One commenter asked how the proposed start date had been determined and has requested justification for the date. The commented wrote that in the absence of this justification, the date appears arbitrary. The State of Illinois motor vehicle administration maintained that ''the proposed timeframe for implementing the NMVTIS program under these rules is unrealistic to the point of being absurd.'' Although that Illinois agency conceded that the start date was likely driven by ongoing litigation and a court order, the commenter noted ''that [the] order is either currently under appeal and a stay of enforcement should be sought pending appeal, or the Department of Justice [may have] chose[n] not to seek an appeal.''

Response: The proposed start date was chosen after an analysis of historical timelines to provide batch data to the system, the number of states that currently have implementation funding from DOJ either directly or through AAMVA, the number of states that have indicated previously that they were working towards implementation already, and an expected release of stand-alone access to facilitate title verifications. As noted previously, however, the Anti-Car Theft Act has been in place for over 16 years, and many states have already implemented the provisions beyond the minimum specifications. Finally, the court order does not affect the state-implementation date in any way, and in fact is not even mentioned in that order.

Comment: Several state motor vehicle administrations asked what penalties are in place for states that do not implement prior to the required start date and what provisions will be made for jurisdictions that are in process or intend to implement at a later date.

Response: While DOJ will place its priority on supporting state implementation, DOJ would review state refusals to participate to determine the proper response. DOJ also will work with state officials in support of NMVTIS to encourage state compliance. This outreach could include contacts with state legislatures, governors, consumer-action networks, and law enforcement associations.

Comment: One commenter suggested that DOJ publish a map of participating and non-participating states, so that citizens can observe the participation status of every state.

Response: DOJ will make this map available on *www.NMVTIS.gov* and also will notify every consumer that accesses the site which states are not participating.

Comment: The State of Alaska commented that ''there should be a process in place that allows states to continue to issue titles when NMVTIS is not operational during states' normal business days and hours.'' Alaska recommended that states be permitted to ''issue titles when NMVTIS is not operational, hold the inquiries in a queue and submit the queued inquiries when NMVTIS is operational. If a problem is detected with a title, it would be revoked.'' The State of Illinois commented that standards of performance should be established to address these issues.

Response: While NMVTIS is typically only down for various reasons between 1 a.m. and 6 a.m. Eastern Time and one Sunday morning each month, there are processes in place for unexpected down time during state business hours. While specific processes vary by state according to state business processes, there are methods of continuing offline, such as mailing the new title at a later time, issuing a temporary title, etc. DOJ cannot alter the Anti-Car Theft Act's requirement to make a NMVTIS inquiry prior to issuing a new title. Therefore, new titles should not issue when NMVTIS is unavailable. Current system response time is less than three seconds per inquiry, and the number of unexpected system down times has been minimal. DOJ notes that the NMVTIS connection has not been ''down'' for 30 minutes or more at any time during the last three years, demonstrating that it is a reliable connection and service.

Comment: A state motor vehicle administration agency suggested that the requirement for an ''instant title verification check'' is problematic for states that do not issue titles over-the-counter. The commenter suggested that the word ''instant'' be removed from the final rule.

Response: Some states do not issue titles ''instantly.'' The ''instant title verification check,'' therefore, may take place after the customer has left the title administration agency but before a new title is issued. In these cases, states may make the NMVTIS inquiry when appropriate in the titling process, so long as the inquiry is made and title verified before a new permanent title issues.

Comment: One commenter asked if a title-verification check would need to be performed on a state title that was being reassigned after being purchased from an out-of-state dealer.

Response: It is unclear from the comment if the commenter was referring to a title being transferred out-of-state or into the state. States are required to check incoming titles related to vehicles from out-of-state. States are not required to check titles being transferred out of the state. With regard to the need to verify titles during dealer reassignment or the transfer of vehicles from one dealer to another, the Act requires that states verify the title of any automobile coming from another state, which DOJ has determined includes dealer reassignments when involving dealers in different states.

Comment: One commenter argued that the system should provide state motor vehicle titling agencies with sufficient information to resolve discrepancies during the title-verification process.

Response: NMVTIS provides state motor vehicle-title administrations with all relevant data in the system and a seamless and secure electronic connection to other online state title records. NMVTIS will make available any additional information within NMVTIS that may be needed to resolve such discrepancies. In the last year alone, the system generated 45 million secure messages and notifications and made 18.4 million update transactions.

Comment: One commenter noted that information gleaned from a state's ''instant title verification,'' such as reports of prior removal of a vehicle from the vehicle population by export, destruction, reported existence in a salvage or junk yard, or other indication that the vehicle should not be present, should result in a physical inspection of the vehicle to determine the validity of the title and the vehicle.

Response: While DOJ agrees that such reports or results will flag for states the title transactions and vehicles that should be further reviewed prior to undertaking a new title transaction, DOJ cannot require such inspections. It is each state's responsibility to institute policies and procedures for resolving such concerns. This comment does illustrate how NMVTIS can ''flag'' for states those vehicles and transactions that should be carefully reviewed to prevent fraud and theft.

Comment: One state motor vehicle administration asked how NMVTIS will obtain data from the insurance companies and junk and salvage yards.

Response: Insurance carriers, junk yards, and salvage yards are required to report the data enumerated in the Act and regulations. The operator will identify more than one reporting mechanism for electronic reporting, in a format prescribed by the operator. AAMVA and DOJ will identify the

official reporting mechanisms and processes via *www.NMVTIS.gov*.

Comment: The Nevada Department of Motor Vehicles complained that requiring states to provide ''the date the vehicle was obtained is an expensive and time consuming process'' and that states should be permitted to continue sending the title-issue date instead.

Response: There is no requirement proposed for states to submit the date a vehicle was obtained. This requirement is in relation to insurance carrier and junk and salvage reporting.

Comment: The Oregon Department of Motor Vehicles commented that it currently only collects odometer information on those vehicles subject to federal odometer requirements and would be burdened to collect such information on all vehicles. The National Salvage Vehicle Reporting Program argued that states and insurers should be required to include mileage reporting in their data provided to NMVTIS.

Response: States are only required to provide odometer information on those vehicles subject to federal odometer requirements, 49 U.S.C. 32705, and not on all vehicles unless already recorded by the state. States are required to provide to NMVTIS the most recent odometer reading for such vehicles and any later odometer information contained within state title records. DOJ strongly encourages all reporting entities to include odometer readings where available.

Comment: One commenter recommended that the final rules spell out what is actually required from the states and how (*i.e.*, in which format) this information is to be provided. Another commenter, the California State Motor Vehicle Title Administration, recommended that the rule be revised to require information that is consistently available across all states and that only information held by state titling agencies be subject to reporting requirements.

Response: DOJ will clarify what is required of each state and will describe format issues to the extent practical and appropriate. DOJ cannot simply choose to use only information that is available in every state consistently for purposes of populating the system, as doing so would limit the included data and significantly reduce the system's value.

Comment: One commenter recommended that DOJ require that the operator be responsible for developing at least two approaches for NMVTIS inquiries and that DOJ should prepare a cost study relating to the expenses associated with the fully integrated, online approach to compliance.

Response: There are already at least two approaches for state compliance with NMVTIS: (1) A fully integrated, online approach, whereby a state's title information system automatically queries NMVTIS, and NMVTIS provides real-time updates to both states involved in the transaction; and (2) a stand-alone approach, whereby title clerks send inquiries to NMVTIS via a web access point, and their state sends daily updates through a batch upload. A third option, serving central site states, entailing a process whereby verifications are performed via batch inquiry, will be explored and may be implemented soon. However, DOJ disagrees with the need to prepare a cost study because an extensive cost-benefit study of this issue already exists, and cost data from other state implementations is already available for estimation purposes.

Comment: The NADA and at least one state motor vehicle administration commented that DOJ should clarify that states are required to submit all brands to NMVTIS for all automobiles titled within the state.

Response: DOJ agrees and has clarified this requirement under 25.54(a)(2), consistent with statutory requirements.

Comment: The Minnesota Department of Public Safety argued that states should be required to provide title numbers, ''since it would be nearly impossible to establish the 'validity and status' of purported titles without them.''

Response: Participating states already have access through NMVTIS to observe the full title of record, including the title numbers and other information needed to establish the validity and status of titles presented. However, DOJ encourages the states to voluntarily submit that information to NMVTIS with the approval of the operator and the Department.

Comment: The Minnesota Department of Public Safety commented that ''the proposed rule also would require states to provide ['t]he name of the state that issued the most recent certificate of title' and '[t]he name of the individual or entity to whom [it] was issued' when making an inquiry to NMVTIS. This information is not, and cannot be, recorded in MnDVS' current title information system.''

Response: This language was taken from the Anti-Car Theft Act to describe what information would be needed in order for states to make an inquiry into NMVTIS. Since the passage of the Anti-Car Theft Act, and with the very recent development of a standalone access model that only requires a VIN to search, these requirements have changed and this information is no longer needed. At the present time, only the VIN is needed to make an inquiry. This update will be reflected in the final rule.

Comment: The West Virginia Department of Transportation argued that some states exempt vehicles that reach a certain age from the requirements of titling, and that these vehicles should be exempt from reporting.

Response: The rule requires states to report on all automobiles included in the states' titling systems, regardless of age. However, if state law exempts certain vehicles from titling, those vehicles need not be reported to NMVTIS. The state should make the operator aware of these exceptions, however, so that consumers in the state and in other states are advised of this exception, which they may take into account when checking the history of vehicles through NMVTIS.

18. Unfunded Mandate

Comment: Commenters argued that the mandate for NMVTIS has not been funded, and that the requirement for compliance has not been applied or enforced for the 15 years of this process. On the other hand, one commenter noted that NMVTIS is not an unfunded mandate in view of DOJ's investment of over $15 million in the system since its inception and in view of DOJ grants to states to support system participation.

Response: The Anti-Car Theft Act explicitly requires that user fees, rather than federal funding, sustain NMVTIS. Although no funds have been appropriated to DOJ for NMVTIS, DOJ has invested over $15 million in NMVTIS, with a substantial portion going to states to assist them with compliance. The U.S. Department of Transportation previously provided funding during the period it was responsible for the system, which ended in 1996.

Comment: One commenter noted that DOJ's determination that the rule does not meet the threshold cost or burden requirements of the Unfunded Mandate Reform Act of 1995 is not sufficient in and of itself to satisfy the legal responsibilities. Specifically, the commenter noted that ''[t]he fact that the Department of Justice (DOJ) has decided that it is a small enough amount of money that the Unfunded Mandate Reform Act of 1995 does not apply, or that the DOJ has determined that per Executive Order 13132, the cost imposed does not provide sufficient cause for a Federalism issue, is not sufficient.''

Response: The Department of Justice, based on its own analysis, made appropriate determinations based on law and regulation. The White House Office of Management and Budget reviewed and approved this analysis.

Comment: The City and County of Honolulu Division of Motor Vehicle, Licensing and Permits disagreed with the aggregate amount estimated by DOJ in the ''Unfunded Mandates Reform Act of 1995'' section of the proposed rule ''because their estimate is based on the less expensive standalone web solution which operationally degrades customer service and increases the work of our over-the-counter staff.'' The commenter further noted that the aggregate amount should ''factor in the development and deployment of the much more costly integrated on-line solution option that will ultimately be the final solution that states will move towards'' and should include the additional costs that will result ''from the increased load on the system to each jurisdiction when all jurisdictions, insurance companies, salvage yards, consumers, law enforcement, etc. are given access to the system.'' The commenter concluded by stating that using this methodology, the aggregate costs will ''easily exceed the $100 million resulting in the applicability of the Unfunded Mandates Reform Act.''

Response: The methodology employed to calculate the aggregate costs of the program uses the minimum requirements for system participation. DOJ sees no purpose in using a level of participation not required by DOJ as the basis for the cost calculations. While states ultimately may move towards an integrated, online solution for efficiency, and although this method of participation does benefit NMVTIS, DOJ does not require it for compliance. It is DOJ's responsibility to determine the least-costly, most-effective way for implementing the solution, and that is the methodology used in the proposed rule. Further, a fully implemented system, with all jurisdictions, insurance carriers, junk and salvage yards, consumers, and law enforcement personnel accessing and reporting, does not translate directly into an increase in costs for states. In fact, it could very well decrease state costs through offset fees.

Comment: The City and County of Honolulu Division of Motor Vehicle, Licensing and Permits further maintained that because the combined city/county government is a ''small'' government, it is uniquely impacted by the regulations and is entitled to relief. Additionally, this commenter contended that the operator's requirements for extracting and mapping the required data are burdensome, and that should the operator undertake these responsibilities, batch data submission would be much easier to achieve.

Response: The Unfunded Mandates Reform Act and 5 U.S.C. 601(5) define ''small governmental jurisdiction'' generally as rural jurisdictions, those with populations under 50,000, and areas of limited revenues. Based on this definition, the city/county identified by the commenter would not appear to qualify as a ''small governmental jurisdiction.'' In terms of the operator's requirements and the burden associated with such requirements, DOJ will continue to direct the operator to provide as much flexibility in requirements as is feasible, and DOJ will continue to provide technical assistance upon request to identify alternative solutions where necessary.

19. Inquiring Into NMVTIS Versus Other Systems

Comment: More than one state motor vehicle administration commented that NMVTIS will not provide a more substantial benefit than checking third-party vehicle history databases which some states already check. One state motor vehicle administration suggested that the law was unclear as to whether the Anti-Car Theft Act required states to check NMVTIS or another third-party database, stating that ''[t]he previous intent was to provide a system that a state may utilize to verify title before titling a vehicle. This left open the use of other systems, such as Carfax, to research titles. The requirement to mandate use of NMVTIS to verify titles is unrealistic, unworkable and unfair. The intent of the process is to protect citizens against fraud. NMVTIS is not the only system that supports this intent. Limiting research to this system could also lead to misinformation and misapplication of process.''

Response: The Anti-Car Theft Act requires states to verify titles through NMVTIS. No other system, public or private, can provide the same level of assurance as NMVTIS once full compliance is reached. DOJ also points to comments submitted by several organizations that highlighted concerns with the reliability of third-party databases. States wishing to provide increased protections for consumers are encouraged to continue to check such private databases in addition to making the NMVTIS inquiry as required by federal law.

Comment: One commenter noted that ''the fully implemented system * * * will also provide consumers with a source of comprehensive information. Current services such as Carfax have partially filled the need for information, but these providers do not offer as current and complete titling information as the proposed NMVTIS system.''

Response: NMVTIS provides a unique service in terms of the source of its data, its comprehensiveness, and its timeliness. Services such as CARFAX will continue to provide information to the public that is not intended to be included in NMVTIS, such as vehicle repair histories, etc. For this reason, these private services will continue to offer unique and beneficial services.

20. Time Lags

Comment: Several commenters noted that allowing states to upload data (*e.g.*, batch uploading) may create a ''time lag'' that could impact law enforcement investigations and impede the ability of the system to accomplish its goals. One commenter suggested that it would be better to wait until states secure the necessary funding before proceeding with implementation.

Response: DOJ has examined this issue closely with the system operator and with third-party vehicle-history providers. While many third-party databases experience lag time of several weeks or months in getting state updated data, NMVTIS is designed to significantly reduce or eliminate the lag time entirely to provide reliable information to users. For this reason, states choosing the stand-alone method of participation and batch uploads will be required after initial set-up to establish batch updates *at least* every 24 hours. This requirement will greatly diminish the possibility of exploitation of lag time and provide a more up-to-date vehicle history check than is currently available. States do have the option of implementing in fully online mode where data transmission is in real time. DOJ does not have the flexibility to delay implementation until states have funding to implement the fully online mode. Pursuant to a federal district court order, DOJ is required to have the rules published and system available by January 30, 2009.

Comment: One state motor vehicle administration noted that when using the stand-alone method of making inquiries before issuing a new title on out-of-state vehicles, an impact on customer service is expected. Specifically, the commenter stated that an additional ''three to five minutes of processing time'' is expected due to the fact that title clerks in this administration are using a mainframe that does not allow simultaneous internet access, and that to make such

a check, the clerk would have to log out, make the NMVTIS inquiry, and log back in to the mainframe for each out-of-state title transfer.

Response: The lower cost stand-alone method of participation is not as timely as the fully integrated online method. DOJ is committed to working with states and the operator to identify new alternative methods to reduce or eliminate such inefficiencies, such as dedicating one internet-capable PC that could be available to all clerks with the NMVTIS page continuously running. With system response time currently at three seconds or less, this alternative may impact customer service less. Ultimately, however, although the stand-alone method of making inquiries is far less costly for states to implement, it may be less efficient than the fully integrated, online method.

Comment: One state motor vehicle administration recommended that ''all surrendered titles should be verified when being transferred[,] and the rule should not limit this requirement only to 'purchased' vehicles. Without verifying all surrendered titles it is not known whether the title surrendered is the latest title issued[,] and there are many reasons titles are transferred other than through a sale.''

Response: DOJ agrees with this recommendation and notes that the final rule clarifies that the requirement to make verifications pertains to any title or vehicle coming in from another state, including transfers. States are also strongly encouraged to perform such verifications on every title transaction, which is most effective when implementing via the online, integrated approach.

Comment: One state motor vehicle administrator asked if manufacturers' certificates of origin (MCOs) must be verified as well.

Response: Because MCOs are not vehicle titles per se, states are not required to verify MCOs in NMVTIS. However, DOJ strongly recommends that state motor vehicle administrators make inquiries on all title transactions, including initial registration of an MCO, to identify and eliminate fraud and to protect consumers.

Insurance Carriers

21. Reporting on Recent-Year Vehicles

Comment: One commenter asked ''[w]hat is the reason to require insurance carriers to report only vehicles manufactured within the past five model years that they consider junk or salvage? If these vehicles will always go directly to junk or salvage yards, won't the vehicle be reported there anyway? Conversely if there is an opportunity for other disposal of the vehicles, shouldn't the insurance carriers be required to report all vehicles since the VINs could still be stolen for swapping?'' Other commenters noted that vehicles older than five years are often involved in consumer fraud and encouraged provisions for the database to cover the same ten-year age range as is used for odometer reporting.

Response: The Anti-Car Theft Act only required insurance carriers to report vehicles in the current and four prior model years. DOJ is not able to reverse or alter this limitation by increasing the reporting parameters. Junk and salvage yards later may report some vehicles that insurance carriers are not required to report. The Department, however, encourages insurance carriers to report older vehicles.

Comment: ASPA commented that section 25.55(b)(3) of the proposed rule requires insurance carriers to report ''the name of the individual or entity from whom the automobile was obtained or who possessed it when the automobile was designated as a junk or salvage automobile,'' which would seem to be two different individuals or entities in most cases. Further, ASPA notes that it is unclear if the insurance carrier would know the name of the owner when it files the report.

Response: Although the proposed rule required reporting of the name of the individual or entity either from whom the automobile was obtained or who possessed it when the automobile was designated as a junk, salvage, or total-loss automobile, the Anti-Car Theft Act specifically states that both names are required. Reporting both names is necessary to establish a ''chain of custody'' and for other law enforcement and consumer-protection purposes. DOJ changed this language in the final rule to require both names pursuant to the Anti-Car Theft Act. In reference to the concern that insurers may not know the name of the owner, most carriers do possess this information, as this would be the owner of the automobile at the time the vehicle was determined a total loss, salvage, or junk.

Comment: Farmers Insurance commented that the ''trigger'' for insurance-carrier reporting should be when the insurance carrier sells the vehicle or when the customer determines it will retain ownership of the vehicle, because such dispositions may not be known for as much as 90 days after the loss occurs.

Response: Because disposition may not be known at the time of initial reporting, this rule allows the insurance carrier to file a supplemental disposition or update. Many comments emphasized the importance of timely reporting, even when the named owner in the initial report is the insurance company.

Comment: Farmers Insurance suggested that a 12-month grace period should be granted for insurance reporting to begin in light of ''proper system upgrades'' that may be required.

Response: DOJ is not able to provide a grace period, as the court has ordered the reporting to begin by March 31, 2009. Additionally, because DOJ aims to enable third-party reporting through organizations that may already receive such data from insurance carriers, the burden of any system changes should be minimal.

22. Non-Required Data

Comment: One commenter argued that ''[t]he proposed rule overstates the benefits provided to consumers. Particularly, the fact that insurance carriers are only 'strongly encouraged to provide * * * other information relevant to a motor vehicle's title' undermines the broad benefits implied by the rule.'' ''The type of information not reported includes the reason why the insurance carrier may have obtained possession of the motor vehicle—flood, water, collision, fire damage, or theft.'' The NADA further recommended that the rule should require insurers to report the reasons they obtained possession of the vehicle to prevent brand washing and fraud. Additionally, this information would assist in cases where a vehicle is considered a total loss for purely economic reasons (*e.g.*, theft). Several insurance-related organizations contended that for any voluntary reporting that may be contemplated, immunity provisions must apply to this voluntary reporting as well.

Response: DOJ disagrees that the rule overstates the benefits of NMVTIS. DOJ does agree, however, that the reason for the total-loss or salvage designation by insurance carriers may be of importance to a prospective purchaser and to others. Not only does this protect the consumer's interest, but the additional reporting criteria also benefit insurance carriers. Therefore, the Department strongly encourages insurance carriers to report this data element.

Comment: AAMVA commented that unless the rule requires ''junk and salvage dealers'' to report the percentage of damage sustained by each vehicle in their inventories to the states, the states would not be able to consider applying a state junk or salvage brand on these vehicles.

Response: States will not be in a position to make such judgments based on junk- and salvage-yard operator reporting. Insurance carriers have ready access to this information, which is the typical basis for a state's designation. Although the reporting of junk- and salvage-yard inventories was likely not intended to support state-branding decisions, reporting of junk- and salvage-yard inventories may be helpful to states in making brand decisions, but likely not conclusive. Although such vehicles may not end up branded by the states, consumers and other states have the benefit of knowing that the vehicle was in the possession of a junk or salvage yard and therefore may wish to inspect the vehicle or to require an inspection before making purchase or titling decisions. DOJ is not in a position to require reporting of the percentage of damage. However, insurance carriers and others are encouraged to report this information.

Comment: One commenter asked ''[h]ow will DOJ know which states, junk, salvage, and insurance companies are reporting information and reporting all the information that is required? Will someone audit their reports? I recommend that the system operator and the DOJ both make a list of who is reporting and publish that list * * * and audit reporting compliance.'' The commenter also suggested that DOJ require entities to report the company name, address, and phone number for any reports submitted. Another commenter asked who would inform insurance carriers and junk and salvage yards of the requirement to report information to NMVTIS, and who would identify those organizations required to report.

Response: DOJ will instruct the operator to publish and maintain a list of the entities reporting information to NMVTIS. The list will include the name of the reporting entity, city and state of the reporting entity, the date that data was last submitted by the entity, and any contact information for the reporting entity. With regard to who would inform reporting entities of the requirements, DOJ will work with the operator, state-licensing authorities, and affected associations and advocacy organizations to ensure proper outreach and education.

Comment: Several state motor vehicle administrations argued that DOJ should limit what non-required data the operator could ask for and receive (*e.g.*, address of the vehicle owner). Another believed that the value of encouraging non-required data is unknown, and that reporting may only increase the number of discrepancies or errors. ISRI contended that DOJ should limit the ability of the operator to request additional, non-required data, because the current operator would be encouraged to request additional information that would generate revenues to the benefit of the association and its members, creating a conflict of interest. The Minnesota Department of Vehicle Services (MnDVS) argued that the provisions of section 25.53(c), which allow the providers of non-required data to query the system if beneficial in addressing motor vehicle theft, ''exceeds the authority conferred by Congress, is overly broad, and as such represents an arbitrary and capricious exercise of rulemaking power.'' Other commenters, however, reported that other data may be needed for specific purposes and argued in support of this flexibility.

Response: It would be difficult to describe what data the operator is restricted from asking for or accepting, other than social security number, dates of birth, and addresses. DOJ points out that states need not provide data that is not specifically required in these regulations or the Act, and DOJ will need to approve the acceptance of non-required data. Moreover, the non-required data that is readily available would add great value to some consumers, to law enforcement, and to others (*e.g.*, NICB flood vehicle database, vehicle export data, other North American vehicle history records, NICB theft file, etc.). While more data always increases the chances of discrepancies, DOJ does not want to discourage this voluntary reporting. While the current operator does have the best interests of its membership in mind, however, it also has expressed concern for others affected by the rule and will represent the concerns of all stakeholders, not as a trade association, but as the operator of a DOJ system. In response to MnDVS's comment, DOJ is of the opinion that if not in violation of the Anti-Car Theft Act or other federal privacy statutes, such cooperation is necessary and not arbitrary or capricious.

Comment: Several commenters, including at least one from the state motor vehicle administration community, encouraged the inclusion of lien-holder information in the data provided to NMVTIS in light of the difficulty of obtaining this information on out-of-state titles and the associated budget impact on states. Other commenters, including insurance-related organizations, Assurant Solutions, and the NADA, suggested that additional data (including lien-holder information) will provide a crosscheck of information, close up loopholes, and improve NMVTIS.

Response: This comment demonstrates the importance of allowing the operator of the system to request and accept additional information beyond the NMVTIS requirements. While states and others are not required to comply, there may be good reason to do so that would result in cost savings among the stakeholders. In terms of lien-holder information, while DOJ is not in a position to require that lien-holder information be included in the central file, DOJ notes that the existing secure network could be used in conjunction with the NMVTIS central-file information to query the current state of record and to access lien-holder information in that state's title record through the secure network provided by the current operator. Queries of and access to the actual state records should only be permitted when a state has agreed to provide such access, when any state application or certification procedures are completed, and when such access is in conformance with the Anti-Car Theft Act, the DPPA, etc.

Comment: One commenter suggested that DOJ include registration information in the list of required data as a means to ensure accurate tracking of vehicle ownership.

Response: Including registration information is beyond the scope of NMVTIS. Although it may be useful, DOJ cannot require such information.

Comment: The National Salvage Vehicle Reporting Program commented that insurance-carrier reporting should commence on or before March 31, 2009, as required by the federal district court, and that initial reporting by all covered entities should include historical data to the extent available, so that NMVTIS is complete beginning on March 31. Several insurance-related organizations or associations reported that ''[t]he start date for insurers should be clarified. We believe the best approach is to provide that the system applies to automobiles declared junk or salvage on or after April 1, 2009, [and that] the system must be established by March 31, 2009. However, we prefer that more time is provided for insurers to comply.''

Response: DOJ will require that all vehicles declared junk or salvage (including ''total loss'') on or after April 1, 2009, be reported to NMVTIS. However, DOJ strongly encourages insurance carriers and junk- and salvage-yard operators to provide data on vehicles that were declared junk, salvage, or total loss before that date and as far back as 1992, if such data is available.

Comment: The National Salvage Vehicle Reporting Program commented that ''NSVRP strongly endorses the inclusion in the rules of 3rd party enhanced standards that allow for data generators to report to NMVTIS more completely and more frequently than minimally specified in the rules.''

Response: While DOJ is not in a position to articulate data-reporting requirements or standards regarding data that is not statutorily or otherwise required, DOJ notes that the National Salvage Vehicle Reporting Program has worked with nearly every stakeholder group affected by NMVTIS to develop standards for voluntary reporting to NMVTIS that would benefit states, law enforcement, consumers, and others. DOJ applauds the National Salvage Vehicle Reporting Program and strongly encourages the operator to adopt these standards as suggested voluntary compliance standards. While the standards cannot be mandated on any reporting entity, those entities that adopt the standards and report voluntarily in a manner that is consistent with the standards will be providing a significant public benefit.

Comment: The National Salvage Vehicle Reporting Program commented that NMVTIS must support the electronic MCO process and should serve as a catalyst for implementation of the electronic MCO system nationwide.

Response: DOJ is in favor of supporting an electronic MCO process as a way of eliminating and preventing fraud and reducing theft. In addition to NMVTIS, the use of the secure AAMVAnet communications network for states would likely be necessary, and it would be AAMVA's responsibility to authorize its use for this purpose.

Junk Yards and Salvage Yards

23. Salvage Pools

Comment: Several law enforcement and related commenters strongly agreed with the assessment that Salvage Pools are one of the most significant sources used by criminal groups as a source of paperwork and as a way to fund their operations. These commenters agree that Salvage Pools must report vehicles to NMVTIS both when they receive vehicles for sale, and when they sell those vehicles. These commenters further noted that such salvage pools have sophisticated technological capabilities and should not have any problem meeting the reporting requirements. Several of these commenters noted that in some cases, individuals purchase severely damaged units at or via these pools and then steal a similar make and model for cloning purposes. For this reason, these commenters also recommended reporting the buyer's name for these vehicles. Several national consumer-advocacy organizations also supported the constructive definition including salvage pools and the requirement to add buyer name in the reporting requirements.

Response: DOJ reaffirms its determination to include ''salvage pools'' and ''salvage auctions'' in the definition of junk or salvage yards, thereby requiring them to comply with the corresponding reporting requirements. The name of the buyer is not reported elsewhere despite being very valuable for law enforcement and other purposes. DOJ, therefore, added the name of the buyer as required data to report. Because many of the purchasers are reportedly international buyers, some of whom have been linked to fraud and theft rings that purchase such vehicles for clean paper to use on stolen vehicles in the U.S., DOJ also will add to the requirements an indication whether the vehicle is intended for export.

Comment: The Nevada Department of Motor Vehicles commented that by statute, Nevada requires wreckers and salvage pools to apply and transfer their salvage titles, junk certificates, and non-repairable certificates within 10 to 30 days. Nevada suggested that these organizations should be exempt from reporting because the DMV already sends this data to NMVTIS.

Response: Junk and salvage yards, including salvage pools, are not required to report data to NMVTIS if the state already reports the required junk- and salvage-yard information to NMVTIS pursuant to this regulation.

Comment: One commenter asked whether ''the definitions of junk yard and salvage yard, which include even a single individual, [are] a substantial overstep?'' Several consumer-protection organizations also suggested that, with respect to the definition of ''in the business of,'' junk and salvage yards should be defined as any entity or individual meeting the description in the definition that acquires or owns five or more salvage or junk automobiles within the preceding 12 months, which is analogous to other similar reporting standards.

Response: DOJ modified the final rule consistent with the comment from the consumer-protection organizations. The qualifier of five or more vehicles is taken from federal odometer law, and its definition of ''car dealers'' from 49 U.S.C. 32702(2).

Comment: One commenter (CARS of Wisconsin) argued that ''information about who owned the vehicle prior to it being junked is unnecessary.'' The Wisconsin Department of Transportation contended that requiring junk and salvage yards to report the name of the vehicle supplier is unnecessary, as is the disposition of such vehicles. Wisconsin DOT commented that because these vehicles are scrapped or destroyed by these entities and cannot be returned to road use, it is unnecessary to report this information.

Response: Comments from law enforcement entities on the proposed rule demonstrates that this information is of significant value. Additionally, even when a vehicle cannot return to the road, the VIN can be used to clone a stolen vehicle. In states that do not have the same junk-branding requirements as Wisconsin, a junked vehicle can ''live on'' through a cloned stolen vehicle, which will only cease once NMVTIS is fully implemented.

Comment: The Virginia Department of Motor Vehicles expressed concern that the proposed rule seemed to encourage junk- and salvage-yard operators to submit data via FTP or facsimile that potentially would include personal identifying information.

Response: DOJ encourages all reporters to report electronically whenever possible. In cases where electronic reporting is not an option, DOJ will direct the operator to identify a reporting procedure to accommodate the situation. Regardless of the reporting method, DOJ and the operator will ensure that all possible safeguard measures are taken, including secure FTP wherever possible.

Comment: One commenter requested that DOJ require the operator to accept junk- and salvage-yard data from any junk or salvage yard directly or through a third party on their behalf to minimize administrative burden.

Response: DOJ has provided the operator with flexibility in identifying the specific methods of reporting to NMVTIS. It is not in the system's best interest for all required reporters to report directly into the system, due to technical and business reasons. The operator is expected to identify three or more different methods of transmitting information to NMVTIS and will make this information available via its Web site, as will DOJ via *www.NMVTIS.gov.*

Comment: Several commenters have noted that, similar to insurance-carrier reporting, junk and salvage reporting of vehicle presence in inventory on a 30-day basis leaves a significant amount of time for fraud and theft to occur. These commenters recommended that DOJ require reporting of not only presence in

inventory, but also disposition of the vehicle. The recommendations for the revised reporting timeline varied in the recommendations from immediately to several business days.

Response: The Anti-Car Theft Act defines the reporting timeline, and, therefore, DOJ can only require reporting on a monthly basis. DOJ does strongly encourage all reporters to report data as soon as possible or on a daily basis.

Comment: ASPA commented that ''while 'salvage pools' were not included by Congress in the 'Anti-Car Theft Act of 1992' as an entity with reporting requirements, the DOJ sweeps our industry into the group which has these reporting requirements. * * * The salvage pool industry wants to be helpful in combating vehicle theft, but we want to insure that any reporting requirements imposed on our industry are reasonable, in light of the fact that Congress did not specifically place reporting requirements on salvage pools.''

Response: DOJ appreciates ASPA's declaration and will work to ensure that reporting requirements on every industry are reasonable. The reporting requirements proposed for salvage pools are the same requirements placed on salvage yards, which also handle salvage vehicles. Because a salvage pool is in the business of acquiring (constructively defined to include handling or controlling on behalf of) salvage automobiles for resale, it fits well within the statutory definition of salvage yards.

Comment: ASPA commented that because salvage pools generally serve as ''agents'' for insurance carriers, salvage pools should only be subject to the reporting requirements of insurance carriers as they relate to the age of automobile to be reported.

Response: DOJ disagrees with this recommendation because salvage pools are included in the definition of salvage yards, as opposed to insurance carriers.

Comment: ISRI and the National Salvage Vehicle Reporting Program both suggested an exemption from reporting for vehicles acquired from an entity that is obligated to meet the reporting requirements of the Act and rule. They argued that this exemption is necessary, not because of the burden of double reporting, but because, in the case of the scrap-metal-recycling industry, many vehicles are acquired after being flattened or crushed to an extent that a VIN cannot be reasonably obtained.

Response: Many scrap-metal processors and shredders do receive flattened and bundled vehicles and vehicle parts. In those cases, recording a VIN for every vehicle is nearly impossible. Both ISRI and the National Salvage Vehicle Reporting Program assert that such entities are at the ''end of the line'' in handling end-of-life vehicles, and almost always receive vehicles from those who are required to report on the vehicle before it is crushed or bundled. Additionally, with scrap-metal processors and shredders, there is no possibility that the vehicle will be subsequently purchased for operation on public roads by an unsuspecting consumer. However, cloning and destruction of stolen vehicles remain a threat. For these reasons, DOJ created an exception for reporting to NMVTIS in cases where a scrap-metal processor or shredder confirms that the vehicle supplier reported the required data to NMVTIS. Scrap-metal processors and shredders that receive automobiles for recycling in a condition that prevents identification of the VINs need not report the vehicles to the operator if the source of each vehicle has already reported the vehicle to NMVTIS. In cases where a supplier's compliance with NMVTIS cannot be ascertained, however, scrap-metal processors and shredders must report these vehicles to the operator based on a visual inspection, if possible. If the VIN cannot be determined based on this inspection, scrap-metal processors and shredders may rely on primary documentation (*i.e.*, title documents) provided by the vehicle supplier.

Lenders and Automobile Dealers

Comment: Iowa Attorney General Thomas J. Miller supported the DOJ proposal that lenders and auto dealers have access to NMVTIS in order to further NMVTIS's goals of reducing crime, especially fraud.

Response: Commercial consumers will have access to NMVTIS.

Comment: Assurant Solutions argued that lenders and dealers need not only the ability to query NMVTIS for information, but also need the ability to communicate and electronically exchange motor vehicle information to achieve greater efficiencies in title processing, and to limit the number and type of paper-based transactions as a strategy to significantly decrease fraud. Specifically, the commenter suggested that lenders and dealers communicate errors or changes to NMVTIS.

Response: Communication to and from NMVTIS is currently facilitated through the use of the current operator's secure and proprietary network, AAMVANet. This network is not a component of NMVTIS *per se*, and therefore the operator governs use of this network for communication between NMVTIS and its users. In terms of providing lenders and dealers with the ability to make corrections and changes, DOJ notes that it has concerns with authorizing any user other than a state motor vehicle administration or its agents (where applicable) to make corrections directly or changes to NMVTIS data. However, DOJ directed the operator to develop a process for reporting possible errors and requesting changes that may also be used by lenders and dealers.

Responsibilities of the Operator of NMVTIS

24. Consumer Access Methods

Comment: One commenter argued that ''[t]he Web-based access should be open to private individuals who wish to check the status of a prospective purchase.'' And the NADA supported the provisions in the proposed rule allowing dealers to access NMVTIS as prospective purchasers, which is likely to help thwart motor vehicle-title fraud. A consumer-advocate attorney commented that if this information becomes widely and readily available, the vehicle-fraud industry will be significantly reduced.

Response: Prospective purchasers (including dealers who purchase vehicles for resale) are required to have access to information necessary to make an informed purchase decision, and DOJ will require that consumer access be available by January 30, 2009.

Comment: Experian Automotive argued that DOJ should not overlook the significant costs involved in marketing and distributing vehicle-history information, and suggested that these costs are beyond what the operator can provide.

Response: These costs are significant. Under the model of third-party portal providers (as opposed to a single, operator-provided consumer access model), the third parties, not the operator or DOJ, will bear the most significant marketing and distribution costs. It is partly because of these costs that the third-party model was selected.

Comment: Experian Automotive argued that NMVTIS is not chartered to provide the level of information and support that Experian or other private vehicle-history report companies provide.

Response: DOJ has no intention of competing with private vehicle-history-report companies. Those private services possess data that NMVTIS does not intend to provide (*e.g.*, vehicle repair and service histories). NMVTIS is simply intended as a government-sponsored service to verify the title and

brand history of a vehicle reliably, thereby preventing fraud and theft.

Comment: Several motor vehicle administrations and one services organization argued that the operator should not be permitted to sell bulk vehicle data from any state, which would effectively allow private information resellers to bypass contractual agreements and seek the state's database from the NMVTIS operator. Additionally, at least one state motor vehicle administration suggested that the operator should conduct regular program and security audits and should screen potential access providers.

Response: The operator will not sell the NMVTIS central file or any particular state's dataset (*i.e.*, all VINs from a particular state). All information provided will be in response to VIN queries, except in cases of law enforcement queries, which could include searches of NMVTIS by reporting entity name, names associated with reports, location, etc. Data provided to NMVTIS will remain in the possession of the operator and any contractors supporting the operator (*i.e.*, data center hosting or backup). Consumer-access providers are restricted from downloading and storing bulk NMVTIS data for resale or reuse and must use data in accordance with the Anti-Car Theft Act. Any entity using NMVTIS data in a manner inconsistent with these regulations may not be covered under the Act's immunity provisions. The operator shall conduct regular reviews and audits of security arrangements and program compliance and shall work with DOJ to establish access-provider standards to ensure that the access providers are professional and reputable, and that information and access are provided according to the Act.

Comment: One commenter argued that ''[t]he responsibilities of the operator of the NMVTIS system are confusing in subsection (b)(3) and (b)(5), [as] they appear to have the same meaning and impact.''

Response: These subsections describe what the operator of NMVTIS is statutorily required to provide to users of the system, including information regarding a vehicle's current or past status as a junk or salvage vehicle. In other words, NMVTIS will make information about vehicle history available to consumers, state titling agencies, law enforcement, and others through an electronic (*e.g.*, Web-based) inquiry. Although subsections (b)(3) and (b)(5) overlap somewhat, it is possible that the operator may have information indicating that a vehicle has been branded a junk or salvage that did not arise from a report submitted by a junk or salvage yard or insurance carrier.

Comment: One commenter noted that ''[w]ith the expected low implementation costs for this consumer system, there are major benefits to centralizing the system within a government Web site in order to reduce further consumer misinformation. In the alternative, a detailed scheme prohibiting third-parties from charging certain fees for accessing the system'' would be desirable. The commenter further emphasized the importance of regulating third-party involvement.

Response: Third-party involvement will be regulated and monitored by the operator and DOJ. DOJ believes that this is the most sensible manner of implementing consumer access. DOJ has established *www.NMVTIS.gov* as a central source of reliable information concerning NMVTIS, providers, requirements, etc.

Comment: One commenter suggested that the operator be required to establish a data-quality plan that may rely on technological tools to scan for and flag errors in VINs that may be reported to the system.

Response: DOJ agrees with this comment and will direct the operator to adopt all reasonable strategies and techniques for ensuring data quality.

Comment: In response to DOJ's request for comments on methods of NMVTIS access, several commenters agreed that third-party providers may be better suited for handling information access than a single provider. The Minnesota Department of Public Safety argued, however, that private third parties should not be permitted to have access to NMVTIS data in the manner proposed, with little oversight, or to generate profit from the data contributed by the states. Additionally, the commenter stated that this would violate the provisions of the Anti-Car Theft Act that restrict the operator from taking a profit from its role as the NMVTIS operator.

Response: The third-party providers are not given open access to NMVTIS data. Rather, they are only provided access to that data that the Anti-Car Theft Act requires to be available to prospective purchasers. Additionally, the operator will maintain much more than ''little'' oversight over these contractors. Last, while the Anti-Car Theft Act restricts the operator from making a profit, the Anti-Car Theft Act provides no restrictions on third-party contractors, including states that wish to be a portal provider. DOJ will move forward with a third-party provider approach to consumer access.

Comment: The NADA commented on the importance of providing access to NMVTIS information for the wholesale vehicle market: ''If wholesale auctions have access to NMVTIS data, fraudulently titled vehicles could be easily flagged and reported to law enforcement officials expeditiously and efficiently. * * * Transparency at the wholesale level will only help to deter motor vehicle title fraud and enhance the NMVTIS system.''

Response: DOJ agrees and notes that enabling this type of access also will assist in generating revenues to sustain the system and possibly offset or eliminate state fees. So long as this access is on an inquiry basis, and NMVTIS data is not sold in bulk as previously described, DOJ will authorize and direct the operator to provide such access to dealers and other commercial consumers, consistent with the Anti-Car Theft Act.

Comment: Several commenters expressed concern that the operator must provide robust security protections for the information to be included in NMVTIS.

Response: DOJ will ensure that the operator relies on industry-standard security and related protections, including any relevant policy recommendations of the Global Justice Information Sharing Initiative that relate to security and privacy protections of information systems used in the criminal-justice environment.

Comment: ISRI argued that DOJ's authorization for the operator to identify third-party organizations to receive and provide data to NMVTIS in lieu of allowing all required entities to report directly to NMVTIS is problematic. ISRI believes that allowing third-party organizations to handle the information creates a security risk, provides an opportunity for market participants to access confidential business information, and could create a cost burden for reporting entities. ISRI recommended additional security protections and restrictions that would prevent these potential problems.

Response: The current operator's information architecture is not designed to allow hundreds, and possibly thousands, of reporting entities to report directly to NMVTIS. In light of this, and because many of the covered reporting entities are already reporting to third-party entities, such as the Insurance Services Office (ISO), allowing a third party to receive and provide the required information is effective and reduces burden on reporting entities by allowing their current reporting to be used in NMVTIS compliance. DOJ will require the operator to designate at least

three third-party organizations for reporting purposes, so that covered entities can choose which third party they are most comfortable with. Additionally, any third-party organization that develops a reporting application at the operator's request will agree to terms and conditions restricting the sale or use of the data, consistent with the Anti-Car Theft Act.

Comment: Auto Data Direct, Inc. suggested creating a policy to prevent free dissemination of prospective-purchaser-inquiry data by any entity and suggested charging all consumer-access providers the same fees in order to maintain a level playing field.

Response: DOJ agrees and will direct the operator to ensure that all consumer-access portal providers are charged the same fees for NMVTIS information, notwithstanding volume discounts. Consumer-access providers, however, are currently not restricted in what they can charge the end user (prospective purchaser) for an inquiry, as DOJ has determined that the ''market'' can determine this better than any artificial caps or minimums.

Comment: The Minnesota Department of Public Safety commented that section 30504 of the Act requires DOJ to prescribe by regulation the procedures and practices to facilitate reporting to NMVTIS. The commenter suggests that DOJ is merely placing this burden on the operator to circumvent the DOJ's own responsibilities.

Response: DOJ strongly disagrees with this assessment. Requiring that these procedures, which are subject to change and modification as technology advances, be published in federal regulations is unwise and inefficient and would only serve to restrict the states and other covered participants from working with the operator to improve reporting practices. It is in everyone's best interest that such detailed procedures are not codified in regulation beyond the procedures and practices that are described herein (*i.e.*, third-party reporting, reporting via batch upload or realtime, etc.).

Comment: AAMVA asserted that it cannot support the development and implementation of a third-party reporting mechanism to support insurance, junk, and salvage reporting. AAMVA reports that to establish this connection with the required two or three third-party organizations would require $1 million to $1.5 million in development costs and up to $400,000 in annual operating costs from federal funds to implement this provision.

Response: DOJ is under court order to establish this mechanism by March 31, 2009. DOJ has recently provided AAMVA with federal funds of nearly $300,000, and AAMVA expects to receive approximately $1,500,000 in user fees by end of year 2008. Much of these funds are spent on other activities, including and especially support for currently participating states. DOJ expects to work with AAMVA on cost controls and to intervene to ensure that the basic connection is established as required by the court. The Anti-Car Theft Act specifies that NMVTIS will not depend on federal funds and is to be supported by user fees.

Comment: The National Salvage Vehicle Reporting Program commented that commercial consumers such as auto dealers would desire the ability to inquire on multiple VINs at the same time in a ''batch'' format at an appropriate cost. Consumer-advocate attorney Bernard Brown commented that ''such broad access to NMVTIS data should be provided for all of these businesses and entities to level the playing field'' in the competitive market place. Other consumer-advocacy organizations commented that such commercial consumers should not be permitted to provide the NMVTIS vehicle history to other consumers without also notifying such consumers of the NMVTIS disclaimers and warnings.

Response: Similar to the need for central-issue states to inquire against multiple VINs at the same time, commercial consumers should have the same service available at a cost commensurate with the service. Because DOJ is directing the operator to make such a batch-inquiry process available for central-issue states, this same service should be available to dealers and other commercial consumers. DOJ points out, however, that these searches will require a VIN for each vehicle to be searched. That is, no bulk data will be made available to any consumers. DOJ will require the operator to require all third-party portal providers to make a NMVTIS Notice and Disclaimer available to all consumers accessing the system. Additionally, DOJ has collaborated with the Federal Trade Commission on its Used Car Buyers Guide regulations to ensure that the FTC is aware of NMVTIS and the accompanying notice and disclaimer.

Comment: Several commenters, including the National Salvage Vehicle Reporting Program, stated that the inclusion of specific disclaimers for limitations to the data reported by the system is essential for consumer protection purposes.

Response: DOJ agrees and will work collaboratively with the operator and others to ensure that appropriate notices and disclaimers are in place.

Comment: One commenter noted the need for proactive efforts by DOJ and the operator in the areas of public awareness and education on NMVTIS and the issues it addresses.

Response: DOJ will work with the operator and the various stakeholder communities to develop and distribute information through *www.NMVTIS.gov* and other means.

Comment: Several consumer-advocacy organizations argued that consumers should be provided access either at no cost or nominal cost without onerous access requirements and allowed to make multiple inquiries for a fixed price. Similarly, these organizations contended that consumers who have completed vehicle purchases should be able to verify their vehicles' history, and that the Department should take into account consumers' lack of access to credit and the ''digital divide.''

Response: DOJ agrees that consumers should be able to access NMVTIS at nominal cost, that there should be no onerous access requirements, and that any consumer—including those who recently purchased a vehicle and those who may be considering purchasing a vehicle in the future—should be permitted access. DOJ will take into account the comments on pricing structures and the issues of credit access and ''digital divide'' while working with the operator to establish the consumer-access provisions.

25. Operator Accountability

Comment: Several state departments of Motor Vehicle Administration argued that the operator must provide a reasonable and timely process for correction and amendment of records that contain errors, and that the operator must take responsibility for notifying users of the erroneous information. Another asked who would be responsible for working with insurance carriers and junk and salvage yards when their data is questionable or incorrect. The commenter also asked how the data would be corrected.

Response: DOJ agrees that an error-verification and correction process is vital to the success of the program. However, in some circumstances, it may be impossible to fully verify the facts of some situations (*e.g.*, vehicles disposed of). The operator will be required to work with data reporters to identify and resolve potential data errors, to note within the central file any discrepancies reported or the findings of any investigations of errors, and to notify those who accessed the information of any confirmed erroneous information.

No entity, including the operator, may remove any data reported by another organization, and only state motor vehicle-title administrations can unilaterally change their data, which will update in NMVTIS. Insurance carriers and junk- and salvage-yard operators do not have access to modify data in the system, but are required to notify the operator immediately of erroneous information that they previously reported and to immediately report corrected information, which will be flagged or noted in the system as an update. Although the erroneous information may be retained in the file, it will be noted as corrected via update, and the updated, correct information will be available. In releasing insurance, junk, or salvage information, the operator may include the name of the reporting organization and its contact information, so that anyone questioning the validity of the report can go directly to the source of the information. It is important to point out that while NMVTIS is authorized to serve as a data repository and data provider, NMVTIS was not expected to serve as an arbitrator of questionable or even conflicting information. It is the responsibility of the data reporters (including states and insurance, junk, and salvage organizations) to provide correct information, and to provide updates and corrections as soon as they are identified. Although the operator should not remove previously reported information, the operator can add a ''note'' to the record regarding the corrected information, along with the corrected information. Additionally, DOJ added a section to the regulation (section 25.57) that provides for error correction in exceptional circumstances.

Comment: One commenter stated that ''[t]he GAO report stated that there have been problems with funding NMVTIS through AAMVA, including: excessive consultant fees; lack of documentation for payments; failing to maintain records supporting financial reports; and failing to adequately administer contractual arrangements with the states. *GAO report at 10*. How has the track record for management of NMVTIS improved since then? What type of financial oversight is expected for the system? And what type of compensation structure does NMVTIS propose for its labor costs?''

Response: Because the current operator (AAMVA) has received grant funding from DOJ, the operator is responsible for complying with all grant requirements, including financial and programmatic requirements relating to contracting, documentation, and performance. Also, DOJ will play an active role in overseeing the administration of the system. DOJ also has added requirements for the operator to publish an annual report to include revenues and expenses by category. DOJ leaves operator labor cost structures up to the operator to determine what is most advantageous and cost-effective while complying with DOJ financial requirements. DOJ also has added a requirement (should DOJ not be the operator) for an annual independent audit of NMVTIS revenues and expenses, the results of which will be publicly available. DOJ also may terminate the operator status of any organization (if not the Department of Justice) for cause, should that be necessary. DOJ also has coordinated with another federal agency, the Office of the Inspector General (OIG), which recently completed audits of the operator's financial recordkeeping and practices and will continue to monitor these issues. DOJ also notes that the GAO study was completed many years ago, and that AAMVA has undergone many changes since that time.

Comment: One commenter asked ''to what extent is the potential for corruption of those who manage the system a concern? What internal controls will be implemented? Is this why access provided by the operator to users of NMVTIS must be approved by the Department of Justice? § 25.53(d).''

Response: DOJ has no basis for any concerns of corruption. The internal controls in place to protect the integrity of the system are many and varied, including technological controls, transparency, and oversight from a variety of stakeholders.

Comment: One commenter noted that ''[t]he estimates in the regulations give the impression that the operator doesn't know exactly how much the system costs to operate[.] The estimates provided all seem pretty high. Why does it cost so much to operate the system? Is DOJ sure that the operator has the experience and ability to run the system well?''

Response: DOJ is very concerned about current system costs. DOJ will continue to monitor and encourage cost-saving options and will look to the annual independent audits to inform the operator and DOJ of additional cost-saving strategies. DOJ notes that the current operator, AAMVA, already administers other federal-state systems successfully. DOJ will continue to encourage AAMVA to seek cost savings by outsourcing technological solutions as appropriate and by adopting current and less-costly technological solutions.

Comment: One commenter asked ''[h]ow will DOJ oversee the program and the operator? Because these questions are obvious and because others have already asked questions about the same issues, I recommend that DOJ create some kind of governance model to oversee the project. The current operator has close ties to the states, but other groups required to participate don't have a seat at the table. A board of governors that has people from the groups that use the system or need the system is definitely needed.'' Similarly, one state motor vehicle administration noted that ''the proposed rules and the options AAMVA is willing to provide do not match. The lack of flexibility on the part of AAMVA results in many options set forth in the proposed rule not actually being available to the states.'' The California motor vehicle administration commented that a board or commission made up of state representatives, DOJ, and the operator should be engaged to discuss and agree upon the requirements relating to consumer access. Other commenters also recommended the establishment of a steering committee to govern operation of NMVTIS outside of the rules.

Response: It is DOJ's responsibility to oversee the program and make or approve all policy decisions regarding the implementation of NMVTIS. To ensure input from all stakeholders, the Department may establish a NMVTIS Advisory Board to make recommendations to DOJ regarding the system and its operation.

Comment: Several commenters recommended that DOJ publish the NMVTIS system budget on an annual basis for review as a part of an annual report, and another commented that the operator should be required to provide quarterly reports on the number of vehicles reported on during each quarter, along with dispositional information, in order to give better insight into the effectiveness and compliance rates within the system. Another state motor vehicle-title administration recommended that the operator be required to have procured an independent audit of the fees generated and expenses incurred on an annual basis.

Response: DOJ will require the operator (if not the Department of Justice) to prepare and publish electronically a detailed annual report that includes many of these items, and DOJ also will require an annual independent audit of NMVTIS revenues, costs, expenditures, and financial controls and practices, which shall also be available.

Comment: The California motor vehicle administration suggested that

DOJ should identify its responsibility for oversight of the system and operator performance, and that specific performance measures should be established along with a minimum-performance period such as a year. The commenter further suggested that the review of operator performance should include solicited comments from the various system stakeholders.

Response: As previously stated in these comments, the Anti-Car Theft Act provides that NMVTIS is a DOJ system over which DOJ has sole responsibility and control. As necessary, DOJ will enter into an Memorandum of Understanding (MOU) with the operator that addresses these issues in greater detail.

Comment: Several commenters noted the need to require the operator to provide information to reporters and others on its compliance and the compliance of others in the program.

Response: DOJ will work with the operator to establish the specific compliance monitoring, management-control functions, and administrative-dashboard features that will be required. In its annual report, the operator will provide compliance data and information on which states, insurance carriers, and junk- and salvage-yard entities are reporting to the system and participating, if available.

User Fees

26. Per Transaction

Comment: Several commenters noted that the user fees should be based on a ''per transaction'' basis: ''The fee structure based on a pro-rata share to states based on the number of registered vehicles is not an equitable structure. States put information into the system and all the states involved in the system benefit from this. Under a pro-rata system, states that have a low number of title transfers but a high number of vehicles ha[ve] to pay in more for the system for marginal benefit. Other states, for example states that act as dealer hubs and have a large number of title transfers but a small number of registered vehicles[,] would be benefitting disproportionately. For those reasons, the fees should be applied on a per transaction basis.''

Response: Several commenters, including state motor vehicle-title administrations, noted that fees based on a ''transaction'' basis could serve as a disincentive for states to participate and to make NMVTIS inquiries, which would leave consumers and others vulnerable. Additionally, several commenters noted that fees based on a *pro rata* basis provided the ability to know fees in advance, which would assist in budget planning and requests. Finally, a transaction-based fee structure would require the operator of NMVTIS to revise its billing process and would likely be more costly to implement. For these reasons primarily, DOJ has determined that state user fees will be based on the number of motor vehicles titled or registered as reported by the U.S. Department of Transportation's Federal Highway Administration through its Highway Statistics Program and reports. With full state participation mandated beginning January 1, 2010, the operator will invoice all states regardless of their level of participation. State fees shall be reviewed biennially and announced to the states as soon as possible, preferably more than one year in advance of becoming effective.

Comment: Experian Automotive commented that some aspects of the proposed rule could be read to allow the establishment of a fee beyond what would be reasonable for the records, which would be essentially the same as prohibiting the disclosure of information outright.

Response: The current inquiry fee used in consumer-access pricing is based on market assessments, and with volume discounts included, has been effective in securing consumer-access provider-organization agreements. However, DOJ will carefully monitor consumer access pricing to ensure that the average consumer is not ''priced out.''

Comment: AAMVA and the States of California, New York, and Alaska commented that user fees based on the number of vehicles registered in the state are the preferred basis, as this will enable states to determine the fees in advance, which will support budget planning. At the same time, states such as Texas, Oregon, South Carolina, and Hawaii have recommended a fee structure other than the number of registered vehicles because of the high number of registered vehicles in some states. The State of California recommended that the fees be the subject of a separate, future rulemaking, that the operator be required to make its expenses publicly available, and that a stakeholder group comprising the operator, DOJ, and states provide input into the fees.

Response: DOJ agrees with AAMVA and several states in making the basis for state fees the number of vehicles registered or titled. DOJ cannot defer rulemaking on fees because the operator has indicated extensively that funding for NMVTIS is critical. In fact, in the operator's public comments on this rule, it acknowledges that it cannot implement key aspects of NMVTIS in accordance with a federal court's order without critical funding. For these reasons, DOJ must resolve this issue now. DOJ agrees that all expenses and revenues for NMVTIS be made publicly available annually.

Comment: More than one commenter argued that ''[c]harging a 'user fee' to a state for the information they are required to upload to the system is simply unfair. If anything, the states are providing this information as a courtesy to enable the NMVTIS process to function. As such, a state should not be charged a fee for providing data. Rather, anyone, including a state, which uses the system to process requests, should pay fees for system use.''

Response: The user fee is not charged to a state solely for sharing its data with the system and other states. The user fees are assessed in light of the states' use of the system overall as is required by law, including making inquiries into the system, relying on the system to maintain a national brand history, and facilitating the secure exchange of title information and updates between states to protect the states' consumers. Additionally, all states receive a level of added protection from fraud via participation by other states.

Comment: The State of South Carolina Department of Motor Vehicles suggested that ''states could be charged for inquiries prior to the issuance of a new jurisdictional title based on an out-of-state title; however, states should be reimbursed for these charges based on the number of third-party inquiries that the system receives. If such a model is not developed, then states will take a double hit: the cost of full participation in the program, as well as the loss of revenue resulting from third parties being able to obtain current jurisdictional data through alternative means.''

Response: Regardless of the fee model, DOJ has taken steps with the operator of the system to ensure that impact on states is minimized. In fact, the model that South Carolina proposes is very similar to the model being considered by DOJ and the operator. The model DOJ is proposing for generating revenue includes a component designed to ''point'' consumers to the full title history in the state of record, thereby potentially generating additional revenues for the state, and the model includes a strategy of using revenue to cover system operational costs as well as offsetting state user fees. Once system operational costs are covered, DOJ anticipates offsetting or eliminating state fees entirely with revenues generated by the

system. Should NMVTIS ever reach the point where an unexpected surplus of user fee revenue exists, DOJ could direct the operator to reduce user fees the following year or could use the funds to support state upgrades to motor vehicle title information systems. This latter use of funds would be directed by DOJ exclusively.

Comment: The State of Illinois motor vehicle administration commented that in order for NMVTIS to be effective, NMVTIS should purchase vehicle-history data from the state, ''mark up'' the price of the data, and sell the data to third parties. Illinois suggested that ''with this model, everyone wins,'' and that ''consumers win because they can rely on the complete, consistent, and efficient flow of information about motor vehicles.''

Response: While this concept may be appealing to some, the concept has several major flaws. First, the Anti-Car Theft Act does not authorize or even suggest that DOJ should purchase state data. Had this been contemplated by Congress, funds would have to have been appropriated or at least authorized to make the purchases. Additionally, government agencies are not in a position to engage in speculative purchases. Consumers would not win under this scenario because they would be left to pay high prices for vehicle-history information, which many cannot afford and should not have to do to be protected. Last, this is not what is required under the Anti-Car Theft Act.

Comment: The State of California recommended that the states be charged a flat fee for participation that would cover NMVTIS operating expenses, and that all revenues generated from consumer access be returned to the states.

Response: DOJ believes that, based on the arguments presented by the states in response to the proposed rule, there is no equitable way to charge a flat fee due to variances in the number of vehicles in the states, number of title transactions, number of out-of-state transfers into the states, etc. DOJ believes that the fees must be based on a factor that is correlated to a state's required use of the system. In terms of returning revenues generated from consumer access to the states, this is not too dissimilar to what DOJ has proposed—offsetting state fees (potentially entirely) with revenues from consumer access once system operating costs are covered.

Comment: One commenter stated that ''states should not be charged simply for submitting their title data to NMVTIS. States that choose to use NMVTIS should not be charged for assisting the DOJ.''

Response: States are not charged for simply submitting data to NMVTIS. States are required to use NMVTIS for inquiries prior to issuing new titles for out-of-state vehicles, and NMVTIS can provide real-time updates and corrections as well as a secure method of sharing title information between states. In fact, for the 13 states currently online, 45 million messages or exchanges have been processed by NMVTIS, and the State of California has commented that NMVTIS is an ''integral part of state operational activities,'' demonstrating that NMVTIS does provide services to the states. The purpose of NMVTIS is not to assist DOJ, and DOJ has limited use for the data in NMVTIS. NMVTIS is a service to states that provides greater consumer protection, reduces crime, and can improve titling process efficiencies, all three of which ultimately reduce costs to the states overall as well as to consumers.

Comment: One commenter noted that ''the Department of Justice does possess a legitimate interest in incentivizing full state participation in NMVTIS.'' All states receive a benefit from NMVTIS. ''Title washing and rebranding of vehicles remain a national problem, not somehow confined merely within state borders. Providing information to NMVTIS allows law enforcement agencies to confront crimes that may have originated or affected states outside of their jurisdiction.''

Response: DOJ agrees with this comment.

Commenter: One commenter expressed disappointment regarding state concerns over user fees and system costs and recommended that DOJ pursue enforcement against non-participating states.

Response: DOJ appreciates the concern and will monitor state compliance with the Anti-Car Theft Act and the NMVTIS rules.

Comment: One commenter noted that the fee structure should be based on the activities generating the most costs, such as storing vehicle data, performing verifications, etc.

Response: DOJ agrees that the fees should match the costs of the system. In asking for comments on the fee structure, however, DOJ was attempting to solicit input from the field regarding the most equitable manner of developing the fees and applying them to all states. As for costs, the majority of current expenses are for supporting online states and states in the process of implementation and data storage.

Comment: The State of New York Department of Motor Vehicles commented that a transaction-based fee could serve as a disincentive to states to query the system often. The state further commented that a flat fee may be more effective.

Response: DOJ appreciates this input and assumes that the commenters' reference to a ''flat fee'' could include a tiered fee structure, such as what is in place today, as this results in a flat fee for the states in each tier.

Comment: One commenter noted that ''[w]e remain convinced that if this is a program that is as effective as it is pronounced to be, if it will truly accomplish all of the goals it is said to have, then it should be fully funded and supported by the Department of Justice. Otherwise, it should be funded by fees charged for those states, individuals and organizations who request data from the system, based on a transaction fee as determined by AAMVA to sustain the system. If that is not possible and the DOJ will not fund it, it should be cancelled.''

Response: The Anti-Car Theft Act explicitly states that NMVTIS should not be dependent on federal funds for operation. DOJ has awarded over $15 million to NMVTIS and participating states, in addition to the funds awarded by the Department of Transportation prior to 1996. Since 1992, no more than $2 million has been collected in user fees by the operator. DOJ will comply with the Anti-Car Theft Act in requiring a system of user fees to support system development, operation, and maintenance. Because the Anti-Car Theft Act requires that DOJ implement the system so that it is sustained by user fees, DOJ has no ability to ''cancel'' the program.

27. Tier Structure

Comment: Several commenters, including AAMVA, noted that a tiered structure is the most workable structure from a budgeting perspective, given that this type of basis or structure will lessen the need for annual changes to fees, which are unworkable for states with biennial budgets. However, some states, such as Oregon, Virginia, Alaska, Minnesota, and others, noted that a non-tiered structure is preferred.

Response: DOJ appreciates this input and has elected to keep the tier structure in place. While there is still disparity between small and large states, and between those states that have significant differences in the number of titled vehicles, the tiered structure does help in reducing disparities between states of similar size. Additionally, the tier structure allows the per-vehicle

basis fee structure to remain relatively stable, rather than fluctuating constantly, and because it acts as a stabilizer, it results in a stable fee that states can budget for appropriately. Last, the tier structure is the structure that the AAMVA Board has adopted as a workable method for establishing fees.

Comment: AAMVA commented that in addition to retaining the tiered fee structure, DOJ should modify the final rule to allow changes to the fee structure to be determined through a mutual agreement between DOJ and the operator.

Response: DOJ firmly believes that issues such as the structure of mandatory fee systems should be addressed in a public manner, as opposed to handled informally and without input from stakeholders.

28. Per Vehicle

Comment: More than one commenter noted that user fees should be based on the number of ''automobiles'' titled versus the number of ''motor vehicles'' titled in a particular state.

Response: While DOJ understands the comment and agrees in principle, the ''basis'' for calculating such fees has no impact when fees are adjusted to cover system costs. In other words, charging a user fee of $0.02 based on the number of ''motor vehicles,'' versus $0.04 based on number of ''automobiles,'' is academic. Because NMVTIS already includes and services titles on all motor vehicles that a state may provide data on, many stakeholders and DOJ encourage states to make verifications on all motor vehicle transactions. States have been paying fees based on number of motor vehicles, and because the number of motor vehicles (a more comprehensive figure) is easier to calculate for states and the operator, DOJ authorizes the operator to continue the practice of charging user fees based on the number of motor vehicles titled in the states.

29. Charging Non-Participants

Comment: Several commenters, including the current operator, expressed concern with charging fees to all states regardless of participation. The North Dakota Department of Transportation noted that the proposal to allow the operator to charge the user fee to all states, even if a state is not a current participant in NMVTIS, is ''unfair'' and that there has been no evidence provided that demonstrates the enhanced effectiveness of NMVTIS when all states participate. That commenter also argued that there is no evidence that criminals have targeted non-participating states. The commenter noted that ''paying for the privilege of participating * * * is patently unfair and simply ludicrous.'' Another commenter stating the same conclusion described the system as ''an unfunded mandate where the particular costs to states are vague, and the total costs ill-defined.'' The State of Texas commented that this would not represent a true ''user fee,'' and the State raised the possibility of ''constitutional problems'' in paying such a fee.

Response: DOJ disagrees with each of these comments. Because all states are required to participate fully in NMVTIS and all states receive benefits from the system, all states must pay the user fees. There is no option for states to not participate in NMVTIS, which includes paying user fees to support the system as required by the Anti-Car Theft Act. Existing research demonstrates NMVTIS's effectiveness. Moreover, state and local law enforcement organizations, as well as automotive insurance experts, agree that non-participating states are being targeted for exploitation. It is important to note that the operator of the system has no discretion with regard to charging user fees, as this is the economic model established by the Anti-Car Theft Act. The operator has been steadfast in ensuring that DOJ understands and appreciates the perspective of its members and has worked closely with DOJ to identify ways of lessening the burden of implementation on state agencies. Additionally, states have multiple options for implementation in order to best manage the costs of participation, and certain cost-saving and potential state-revenue-enhancing features have been established or planned.

Comment: The State of California commented that ''we agree with the recommendation to charge all states. If the fee is charged to all states regardless of participation, there will likely be greater participation by all states. This could increase the value of the database, generating additional consumer transactions, which can then be used to offset the user fees charged to states.''

Response: DOJ agrees that by charging all states a user fee in light of the requirement for all states to participate and the benefits all receive, any disincentive to make title verifications or use the system in the manner required is eliminated.

Comment: One commenter noted that his or her state ''will not voluntarily pay user fees.''

Response: User fees will not be voluntary. Because the Anti-Car Theft Act requires that NMVTIS be self-sustaining through user fees, the final rule requires the operator to issue invoices and charge users of the system a user fee based on system operating costs and other factors that affect the costs, such as necessary upgrades or enhancements. Payment of the user fee is required for compliance with Federal law.

Comment: One commenter noted that all users of the system should be charged user fees, including entities reporting data.

Response: At this time, DOJ is not in favor of this recommendation because of the increased financial burden it would place on junk and salvage yards and insurance carriers, and the disincentive it would impose on their reporting of data.

30. Enforcement

Comment: Several commenters from various stakeholder groups asked who would be responsible for enforcement of the provisions of the rule and how enforcement responsibilities will be conducted.

Response: Responsibility for enforcement of this rule resides with the Department of Justice overall. Within DOJ, several component organizations (including the Bureau of Justice Assistance, the Federal Bureau of Investigation, and the Civil Division's Federal Programs Branch) will collaborate with each other, with the operator, and with state and local law enforcement to ensure compliance and to respond to allegations of non-compliance.

Comment: ARA commented that an ''amnesty period'' should be provided because most automotive recyclers will depend on inventory-management vendors to provide a reporting mechanism.

Response: While an ''amnesty period'' *per se* is not established, DOJ will work closely with the ARA and other organizations including the operator (if not the Department of Justice) to ensure that the commencement of reporting is not impeded. During the initial period of reporting, DOJ will be focused on implementation as opposed to purely enforcement.

Comment: Several insurance carriers suggested language for clarifying the enforcement aspects of the rule, recommending that a ''violation'' be defined as ''an act in flagrantly and in conscious disregard of this chapter'' and that the rule include a statement limiting liability of insurance carriers for what is reported and not reported.

Response: DOJ will not define ''violation'' in this regulation because such a definition is unnecessary. The Anti-Car Theft Act provides DOJ with

sufficient discretion to seek and assess penalties, including a requirement that DOJ consider the size of the business of the person charged and the gravity of the violation.

Comment: The National Salvage Vehicle Reporting Program commented that any penalties levied against a required reporter should be determined in a way that will result in a material fine that could force a modification in behavior. This comment was supported by comments from consumer-advocate attorneys who noted that ''[t]he Department should construe the enforcement provisions of the statutes to make them as strong as possible with respect to any potential deliberate violations by insurance carriers or salvage yards.''

Response: DOJ will carefully consider any penalties applied as required by the Anti-Car Theft Act.

Comment: The National Salvage Vehicle Reporting Program commented that ''the establishment of regular document procedures by an entity to provide compliance should be considered a mitigating factor to demonstrate good intent.''

Response: The Department did not propose any regulations governing its enforcement efforts in the proposed rule. At this time, the Department believes that enforcement concerns are adequately addressed by the Anti-Car Theft Act and other applicable statutes and regulations.

Comment: Several insurance-related organizations or associations commented that ''49 U.S.C. 40505 sets forth a $1000 civil penalty for 'each violation of the chapter.' With millions of data points reported from and to many sources, there needs to be an interpretation of this provision that makes clear that good faith efforts to comply would be enough to avoid the penalty. For example, we request that the Department include language along these lines in the final regulation: 'A violation for purposes of 49 U.S.C. 30505 means an act that is committed flagrantly and in conscious disregard of this chapter.' ''

Opposing this view, several national consumer organizations commented that ''the Department should flatly reject the American Insurance Association's proposal that its enforcement authority be limited by a 'flagrant disregard' standard. Nothing in the Anti-Car Theft Act authorizes or contemplates such a standard, and the AIA does not adequately explain why such a standard is necessary, or how it would be satisfied. Consistent with congressional intent, the Department should preserve its full enforcement authority with respect to the reporting requirements of the Anti-Car Theft Act and its implementing regulations.''

Response: As a matter of policy, DOJ will preserve its full enforcement authority and discretion, including the ability to determine what constitutes a violation of the Act. As noted above, the Department believes that enforcement concerns are adequately addressed by the Anti-Car Theft Act and other applicable statutes and regulations.

31. Liability

Comment: Several commenters requested that DOJ clarify liability and immunity protections for all users of the system—those using the data to make decisions and those providing the data to the NMVTIS. At least one of these commenters indicated that without such clarification, some data reporters may be hesitant to comply. Some commenters requested that DOJ clarify protections from both criminal and civil liability.

Response: DOJ does not believe that the applicable immunity provisions require clarification. Pursuant to 49 U.S.C. 30502(f): ''Any person performing any activity under this section or sections 30503 or 30504 in good faith and with the reasonable belief that such activity was in accordance with this section or section 30503 or 30504, as the case may be, shall be immune from any civil action respecting such activity which is seeking money damages or equitable relief in any court of the United States or a State.''

32. System Operating Costs

Comment: One commenter noted that the operator should examine its financial records and projections more closely in order to narrow the estimated system operating cost projections of $3,000,000 to $5,000,000 annually. Such examination would create greater reliability and equity in determining user fees. The commenter further suggested that ''an outside bidding process should be enacted to shift the entire program onto a contractor.''

Response: Because the system has not yet been fully implemented, and because costs are driven in part by system usage, the annual operating costs vary annually and therefore are estimates at this time. DOJ agrees, however, that it is imperative that more robust and tighter financial procedures and controls be put in place, and that transparency be encouraged through an annual publication of an operator report of progress and costs, as well as budget projections for the coming years. DOJ will ensure that these goals are reflected in the requirements of the system operator. While the operator is free to consider outsourcing opportunities for operational components (*e.g.*, technology, financial oversight, etc.), the Anti-Car Theft Act requires that the operator of the system, if it is not the DOJ, be an organization that represents the interests of the states. The Act also restricts the ability of the operator to make any profit from the operation of the system. Based on the current operator's statements regarding continued participation as the operator, DOJ is currently exploring outside bidding processes that could result in moving the program to another operator or to DOJ.

33. Concerns With Cost-Benefit Study

Comment: Several commenters noted concerns with the cost-benefit study cited in the proposed rule and completed by Logistics Management Institute (LMI). Concerns include overstatement of the benefits of NMVTIS, lack of details regarding the study's methodology, vague presentation of findings and issues, and a noted possibility that underreported costs were not well addressed. One commenter argued that ''the LMI study is thoroughly unconvincing, and its methodology is not sufficiently revealed as to permit rebuttal.''

Response: The LMI study was commissioned in 1999 by the National Institute of Justice (NIJ). The reports cited are the only reports available to DOJ at this time. Although more details may be desirable, the LMI study's findings clearly indicate that NMVTIS's benefits outweigh the costs. Comparing an individual state's cost estimates for implementation with the financial benefits of eliminating even a modest number of thefts and brand washings demonstrates the same thing. Moreover, the LMI study likely overestimated the costs of participation because the only method of participation known at the time of the study was the fully integrated method, which required a state to reconfigure title information systems to integrate NMVTIS inquiries and updates into their automated title processes. With a new ''stand alone'' method of participation available, the most costly aspect of known participation at that time (*i.e.*, major modifications to title information systems) has been eliminated as a requirement.

Comment: One commenter noted that ''many improvements will remain theoretical without full participation. The expected benefits however are not illogical; states will only fully gain from NMVTIS once most states are full participants.'' ''The best interests of

states, through their consumers, lies with full participation in NMVTIS.'' In agreement with this, the Virginia Department of Motor Vehicles commented that ''the system provides a great value to participating states and that value will exponentially increase as each jurisdiction begins fully participating.''

Response: NMVTIS will not achieve its full value until there is 100% state participation. However, some states, such as California, have commented very favorably on the benefits of the system, even though all states do not yet participate.

34. Cost Calculations

Comment: One commenter noted that ''[t]here are specific examples of laxity in the cost-accounting figures for this rule. For instance, although the proposed rule states that average fees charged to states by the operator should be less than 3 cents per vehicle, it goes on to say that 'states that choose to integrate the NMVTIS processes of data provision and inquiry into their titling process generally incur one-time upgrade costs to establish these connections.' It would seem that * * * a ballpark figure for this 'onetime upgrade' is needed. Further, the cost of this 'one-time upgrade' may not be insignificant, as suggested by the fact that 'states can lower their upgrade costs by choosing to integrate the NMVTIS reporting and inquiry requirements into their business rules but not into their electronic titling processes.' This would bring with it, however, a definite loss in efficiency.''

Response: It is important to note that there is no requirement in this rule or otherwise that states integrate NMVTIS processes into their title-information systems. Because doing so would be strictly and totally voluntary on the part of the states, DOJ does not see the need to attempt to estimate the costs for this type of implementation. Requests from states for DOJ grant funds have ranged from $17,000 to nearly $500,000 to implement various aspects of NMVTIS, *e.g.*, data provision only, full implementation, etc. While implementing NMVTIS through the stand-alone method eliminates the need for nearly all system modifications, DOJ agrees that this approach may still affect business processes and could therefore impact overall operating costs. However, given that NMVTIS inquiries are only required on out-of-state vehicles coming into the state, and given that system response time is less than three seconds on average, we can reasonably estimate that the cost is minimal for a title clerk to enter the VIN, wait approximately 3 seconds for the response, and review the response (a process estimated to take as little as 60 seconds or as much as 3 minutes). DOJ has included this estimation in the costs described in the proposed rule. Clearly, if discrepancies are found, the time required to process the transaction could increase substantially. However, DOJ notes that this is not a new cost, but a cost that states already have today.

Comment: One commenter asked ''has the agency considered the day-to-day cost of requiring a title clerk to 'switch to an internet enabled PC to perform a Web search of NMVTIS via a secure virtual private network' for every single title check of every single day? (Section 25.54(c) requires that each state shall perform an instant title verification check through NMVTIS before issuing a certificate of title.) Is this additional cost something an underfunded state is supposed to bear simply because it is underfunded? What is the actual cost of having a clerk provide such a search based on the total number of title checks that a state will do in a year?'' A state motor vehicle administration commented on the need to provide a ''batch'' verification method via stand-alone access, so that many title verifications can be conducted as part of a ''back room'' operation.

Response: The estimated costs for this function have been included in the overall cost calculations for the system as described in the response above. It is important to point out, however, that a state is only *required* to check NMVTIS when an out-of-state title is presented. Although states are encouraged to make NMVTIS inquiries before all transactions, it is only *required* in these limited instances. Additionally, states that determine that this process is unworkable may make a one-time system modification to automate the NMVTIS inquiry function. While most states may opt to use the individual title-verification method for over-the-counter operations, DOJ will encourage the operator to make available a ''batch'' verification method as quickly as possible to make compliance more flexible for central-issue states.

Comment: One commenter asked ''what are the anticipated costs of causing an insurance carrier to provide the requested information 'in a format acceptable to the operator?' § 25.55(a). Where is the study indicating this cost? How was this cost determined? And was this cost balanced against the benefit of consumer protection? This rule will increase insurance costs.'' The commenter also asked why insurance carriers should have to provide the information at its own cost. If the information was being collected under the ''guise'' of consumer protection, when it will provide ''any real benefit?''

Response: DOJ estimated the costs to insurance companies and presented these costs and a description of how they were determined in the proposed rule. These costs were not balanced against the benefit of consumer protection. For insurance carriers already reporting to a third party that provides the required information to NMVTIS, no additional costs will be incurred. Amica Mutual Insurance and other insurance organizations that have begun reporting this information on their own have publicly stated the benefits of such reporting. The benefits of NMVTIS in terms of consumer protection are well founded and common sense.

Comment: The State of Illinois motor vehicle administration commented that compliance in the first year of the program would cost the state an estimate $3,700,000, including start-up costs, user fees, and the loss of approximately $2,600,000 in annual sales of vehicle information. Illinois commented that these costs and the model being implemented by the operator is ''nonsensical.'' Other states estimated their costs at approximately $200,000. The NADA added that ''[a]ny state claims of excessive reporting costs should be weighed against the huge costs associated with vehicles with hidden histories entering the stream of used vehicle commerce.''

Response: DOJ disagrees with Illinois's assessment of start-up costs. Because the proposed rule did not prescribe a specific user-fee model, Illinois's estimate of $700,000 in user fees is not reliable. Additionally, organizations that typically purchase state motor vehicle records have signaled that they will continue to purchase state data, as they are unable to purchase the bulk state data from or through NMVTIS. For this reason, Illinois's assertion that it will loose $2,600,000 in revenues likely is unfounded. The only place these organizations can purchase bulk vehicle data from Illinois is from Illinois—NMVTIS will not sell data in this manner. While DOJ is not in a position to address Illinois's estimate of start-up costs, DOJ issued a solicitation in fiscal years 2007 and 2008 to provide funds to states to support NMVTIS start-up costs and encouraged states to apply under other unrestricted, eligible funding programs as well. For many years between FY 1997 and FY 2004, AAMVA also offered funding support to states based on DOJ grant awards to the operator.

Comment: AAMVA contended that although the Anti-Car Theft Act states that NMVTIS should be self sustaining, NMVTIS represents an unfunded mandate that has serious impact on states. AAMVA went on to assert that to achieve full implementation and long-term success, federal funding of the remaining development work and support for system operation is needed.

Response: The Anti-Car Theft Act requires NMVTIS to be self-sustaining and ''not dependent on federal funds'' for its operation. To date, DOJ has invested more than $15 million in NMVTIS development, combined with investments from the U.S. Department of Transportation, as well as a reported $30 million investment from AAMVA. Since 1992, less than $2 million has been collected from user fees. DOJ is concerned that additional investments of federal funds will be used to support the required ''services to states'' and will not lead to additional development of the system. Additionally, DOJ notes that much of the federal funds provided to states through AAMVA remains unexpended even years after being provided to facilitate participation. From 2003 to date, AAMVA and the states have strongly encouraged DOJ to implement the rules for NMVTIS as a necessary step to system implementation. With rules now published, system operation and user fees established, and third-party providers generating additional user fees, it is DOJ's hope that additional federal funding may not be needed, and that the system can begin to be self sustaining as originally envisioned.

Comment: AAMVA commented that its Board of Directors recently concluded that AAMVA will not be able to continue as the system operator if it must subsidize the ongoing development and operation costs of NMVTIS. As a result, AAMVA expects a decision by August 2009 from its Board of Directors as to its continued participation as the operator of the system.

Response: DOJ acknowledges AAMVA's position and, in response, developed a Request for Information (RFI) that was published to identify prospective new operators and organizations that could support DOJ should DOJ become the operator. DOJ expects that any new operator, if not DOJ, will comply with the same provisions of this rule and will work with DOJ, AAMVA, and the NMVTIS stakeholders to perform a seamless transition. The results from the RFI are being used to identify new ideas and capabilities to accomplish the program objectives while minimizing the burden on states.

Provisions of This Rule

The continued implementation of NMVTIS and its effectiveness depend on the participation and cooperation of a number of parties. According to the cost-benefit study conducted by the Logistics Management Institute: ''The way NMVTIS is implemented—piecemeal, regionally, or nationally—will affect how criminals respond. Criminals are highly mobile and may avoid NMVTIS states until most of the country is covered by the system. Criminals use technology to their advantage, both to identify potential theft targets and to camouflage stolen vehicles.'' As a result, any states not fully participating in NMVTIS and their citizens may be disproportionately targeted by criminals committing vehicle crimes. This finding has been repeatedly confirmed by law enforcement at the local, state, and federal levels, and by national anti-theft organizations based on experience and active investigations. Even private vehicle-history providers have agreed that criminals exploit these and similar weaknesses in the vehicle-titling system in the U.S., particularly the lack of communication between state motor vehicle title and registration agencies. The Anti-Car Theft Act also referred to the ''weakest link'' in referring to this problem as it relates to brand washing. *See* Public Law No. 102–519, section 140(a)(1).

Participation in NMVTIS must be expanded to all states. In addition, insurance carriers, junk yards, and salvage yards also need to provide certain information relevant to the life-cycle of an automobile in order for NMVTIS to function properly and achieve the intended benefits. The Anti-Car Theft Act requires junk yards, salvage yards, and insurance carriers to report at least monthly to NMVTIS on all junk and salvage automobiles they obtain. Pursuant to 49 U.S.C. 30504(c), the Attorney General is authorized to issue regulations establishing procedures and practices to facilitate reporting the required information in the least-burdensome and costly fashion.

Accordingly, this rule implements the reporting requirements imposed on junk yards, salvage yards, and insurance carriers pursuant to 49 U.S.C. 30504(c). In addition, this rule clarifies, consistent with section 202(a)(1) of the Act, the title and related information to be included in the system to determine its adequacy, timeliness, reliability, and capability of aiding in efforts to prevent theft and fraud. The rule also clarifies the various responsibilities of the operator of NMVTIS, states, junk yards, salvage yards, and insurance carriers under the Anti-Car Theft Act to help ensure its effectiveness. Finally, this rule provides a means by which user fees will be imposed to fund NMVTIS, consistent with the requirements of the Anti-Car Theft Act and its requirement that NMVTIS be self sustaining and ''not dependent on Federal funds.''

1. State Responsibilities

The effectiveness of NMVTIS increases as more states fully participate. NMVTIS will only be as good as the quality and quantity of information it contains. Consequently, all non-participating states are strongly urged to comply with their obligations under the Anti-Car Theft Act and to begin title verifications and reporting title information to NMVTIS as soon as possible. While the immediate requirement of this rule is to, at a minimum, have all states make verifications on incoming, out-of-state titles and provide regular (at least daily) data updates to NMVTIS, the ultimate goal is for all states to participate in the system via an integrated, online method that provides real-time data updates, making inquiries into NMVTIS prior to issuing new titles on vehicles coming from out-of-state, and sharing other information and data electronically, via NMVTIS. All states must be fully participating as required by the Act and this rule by January 1, 2010. However, for purposes of continuity and to ensure that there is no degradation of services currently provided by NMVTIS, the final rule requires all states to maintain at least the level of participation (data provision, title verifications, remitting fees) that they had established as of January 1, 2009 for the remainder of that year and until the full compliance date for all states arrives on January 1, 2010.

In accordance with 49 U.S.C. 30502, NMVTIS must provide a means of determining whether a title is valid, where the automobile previously was titled, the automobile's reported mileage, if the automobile is titled as a junk or salvage automobile in another state, and whether the automobile has been reported as a junk or salvage automobile under 49 U.S.C. 30504. Each state is required to make its titling information available to NMVTIS. 49 U.S.C. 30503(a). Each state also is required ''to establish a practice of performing an 'instant' title verification check before issuing a certificate of title.'' 49 U.S.C. 30503(b). This rule clarifies the procedures for verifying title information and the information

states must report to NMVTIS pursuant to the Anti-Car Theft Act, and the procedures and practices that states must follow to provide this needed information. Pursuant to 49 U.S.C. 30503(a), states are required to perform an ''instant'' title verification check before issuing a certificate of title to an individual or entity bringing a vehicle into the state. Because several states are ''central issue'' states where titles are produced at a central location after an application for title has been made, ''instant'' is considered to mean at any point before a permanent title is issued. The primary purpose of the verification is to determine the validity and status of a document purporting to be a certification of title, to determine whether the automobile has been a junk or salvage vehicle or has been reported as such, to compare and verify the odometer information presented with that reported in the system, and to determine the validity of other information presented (*e.g.*, lien-holder status, etc.). While the laws and regulations of the receiving state will prevail in determining the status of the vehicle (*e.g.*, branding, title type, or status), the information in NMVTIS should be used by the state to identify inconsistencies, errors, or other issues, and to follow state procedures and policies for their resolution. Because NMVTIS can prevent many types of fraud in addition to simple brand washing, states are encouraged to use NMVTIS for verifications on all transactions whenever possible. This verification includes in-state title transactions, dealer reassignments, lender and dealer verifications, updates, corrections, and other types of title transactions. This business process is made possible through the integrated, online method of state participation and is strongly encouraged by law enforcement, consumer protection groups, and private sector entities.

States are also required under 49 U.S.C. 30503(a) to make selected titling information they maintain available for use in NMVTIS. Specifically, states are required to report: (1) An automobile's VIN; (2) any description of the automobile included on the certificate of title, including all brand information; (3) the name of the individual or entity to whom the title certificate was issued; and (4) information from junk or salvage yard operators or insurance carriers regarding their acquisition of junk automobiles or salvage automobiles, if this information is being collected by the state. The Anti-Car Theft Act also requires that the operator of NMVTIS make available the odometer mileage that is disclosed pursuant to 49 U.S.C. 32705 on the date the certificate of title was issued and any later mileage information, if in the state's title record for that vehicle. Accordingly, the rule requires states to provide such mileage information to NMVTIS. States shall provide new title information and any updated title information to NMVTIS at least once every 24 hours.

In addition, with the approval of DOJ, the operator, and the state, the rule will allow the state to provide any other information that is included on a certificate of title or that is maintained by the state in relation to the certificate of title.

The Anti-Car Theft Act specifically covers ''automobiles'' as defined in 49 U.S.C. 32901(a). That definition, which is part of the fuel economy laws, was most recently amended by the Energy Independence and Security Act of 2007, Public Law No. 110–140, and generally covers four-wheel vehicles that are rated at less than 10,000 pounds gross vehicle weight, but excludes vehicles that operate on rails, certain vehicles manufactured in different stages by two or more manufacturers, and certain work trucks. Participating states, however, have been providing information to NMVTIS on other types of motor vehicles [3] possessing VINs, such as motorcycles and various work trucks. Information on these other types of motor vehicles is very useful to the users of NMVTIS, and law enforcement organizations including DOJ have strongly encouraged states to continue to provide information on such vehicles in order to reduce the theft of such vehicles. Therefore, while states only are required to report on automobiles, they are strongly encouraged to continue reporting to NMVTIS information on all motor vehicles possessing VINs in their state titling systems.

2. Insurance Carriers

The Anti-Car Theft Act authorized the Attorney General to issue regulations establishing procedures by which insurance companies must report monthly to NMVTIS on the junk and salvage automobiles they obtain. 49 U.S.C. 30504(c). Accordingly, this rule clarifies the reporting requirements imposed on insurance carriers regarding junk and salvage automobiles. The Anti-Car Theft Act defines a salvage automobile to mean ''an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage.'' 49 U.S.C. 30501(7). For purposes of clarification, the Department of Justice has determined that this definition includes all automobiles found to be a total loss under the laws of the applicable state, or designated as a total loss by the insurance carrier under the terms of its policies, regardless of whether an insurance carrier retitles the vehicle into its name or allows the owner to retain the vehicle.

As a practical matter, the determination that an automobile is a total loss (*i.e.*, that the automobile has been ''totaled'') is the logical event that shall trigger reporting to NMVTIS by an insurance carrier. Insurance carriers are required under this rule to provide NMVTIS with: (1) The VIN of such automobiles; (2) the date on which the automobile was obtained or designated as a junk or salvage automobile; (3) the name of the individual or entity from whom the automobile was obtained (owner name or lien-holder name) and who possessed the automobile when it was designated a junk or salvage automobile; and (4) the name of the owner of the automobile at the time of the filing of the report with NMVTIS (either the insurance company or the owner, if owner-retained). DOJ strongly encourages insurers to include the primary reason for the insurance carrier's designation of salvage or total loss in this reporting as well. In accordance with 49 U.S.C. 30504(b), the report must provide such information on ''all automobiles of the current model year or any of the 4 prior model years that the carrier, during the prior month, has obtained possession of and has decided are junk automobiles or salvage automobiles.''

In addition, although not specifically required by the Anti-Car Theft Act or this rule, this rule will permit insurance carriers to provide the NMVTIS operator with information on other motor vehicles, including older model automobiles, and other information relevant to a motor vehicle's title, including the disposition of such automobiles, and the name of the individual or entity that takes possession of the vehicle. The reporting of this information by insurance carriers will help reduce instances in which thieves use the VINs of junk or salvage motor vehicles on stolen motor vehicles and will assist in preventing and

[3] Pursuant to 49 U.S.C. 30102(a)(6), a ''motor vehicle'' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

eliminating fraud. Accordingly, the Department of Justice strongly encourages insurance carriers to report such additional information to the operator.

3. Junk and Salvage Yards and Auto Recyclers

Under this rule, junk yards and salvage yards are required to provide NMVTIS with the VIN, the date the automobile was obtained, the name of the individual or entity from whom the automobile was obtained, and a statement of whether the automobile was crushed or disposed of, for sale or other purposes. Such entities must also report whether the vehicle is intended for export out of the United States, which will assist law enforcement in investigations related to the export and cloning of exported vehicles. The reporting of this information will be limited to junk yards and salvage yards located within the United States. Pursuant to the Anti-Car Theft Act, junk and salvage yards are defined as individuals or entities engaged in the business of acquiring or owning junk or salvage automobiles for resale in their entirety or as spare parts or for rebuilding, restoration, or crushing. *See* 49 U.S.C. 30501(5), (8). ''Rebuilding, restoration, and crushing'' is reflective of the varied nature of entities that meet this definition. Included in this definition are scrap-vehicle shredders and scrap-metal processors, as well as ''pull- or pick-apart yards,'' salvage pools, salvage auctions, and other types of auctions, businesses, and individuals that handle salvage vehicles (including vehicles declared a ''total loss''). A salvage pool is an entity that acquires junk and salvage automobiles from a variety of parties and consolidates them for resale at a common point of sale. The pooling of junk and salvage automobiles attracts a large number of buyers. It is the belief of the Department of Justice and the state and local law enforcement community that a significant number of these buyers purchase junk and salvage automobiles at salvage pools in order to acquire VINs or titles that can be used on stolen motor vehicles or to create cloned motor vehicles for other illicit purposes.

Such entities must report all salvage or junk vehicles they obtain, including vehicles from or on behalf of insurance carriers, that can reasonably be assumed to be total-loss vehicles. Such entities are not required to report any vehicle that is determined not to meet the definition of salvage or junk after a good-faith physical and value appraisal conducted by qualified appraisal personnel entirely independent of any other persons or entities. Second, DOJ has added a clarification that individuals and entities of this type that handle fewer than five vehicles per year that are determined to be salvage or total loss are not required to report under the salvage yard requirements, consistent with requirements for automobile dealers, *see* 49 U.S.C. 32702(2).

Pursuant to 49 U.S.C. 30504(a)(2), junk yards and salvage yards will not be required to submit reports to NMVTIS if they already report the required information to the state in which they are located and that state makes available to the operator the information required by this rule of junk and salvage entities. Because some junk or salvage yards may hold vehicles for several months or years before a final disposition (*e.g.*, crushed, sold, rebuilt, etc.) is known, some junk and salvage yards may need to provide a supplemental or additional report at the time of disposition or within 30 days of the date of disposition. Nothing in this rule shall preclude a junk or salvage yard from reporting the disposition of a vehicle at the time of first reporting, if such a disposition is known with certainty. Junk and salvage yards are responsible for ensuring the accuracy and completeness of their reporting and for providing corrected information to the system should the disposition be changed from what was initially reported.

4. Lenders and Automobile Dealers

The Anti-Car Theft Act requires that the operator make NMVTIS information available to prospective purchasers, including auction companies and entities engaged in the business of purchasing new or used automobiles. The Department believes that the scope of prospective purchasers also includes lenders who are financing the purchase of automobiles and automobile dealers. Lenders and dealers are integral components of the automobile purchasing and titling process who also can be the victims of fraud. This rule allows the operator to permit public and private entities involved in the purchasing and titling of automobiles to access NMVTIS if such access will assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles and parts into interstate commerce and to prevent fraud. For purposes of clarification, this rule permits commercial consumers to access and verify NMVTIS information at the time of purchases, as well as at any time during the ownership of or involvement with such vehicles (*i.e.*, lender verifications). States are strongly encouraged to work with lenders and others in using NMVTIS as an electronic means of performing title transactions and verifications. Conducting such efforts in an electronic fashion will eliminate a major source of fraud—paper-based title exchanges, updates, lien releases, etc.

5. Responsibilities of the Operator of NMVTIS

In accordance with 49 U.S.C. 30502, NMVTIS must provide a means of determining whether a title is valid, where the automobile is currently titled, the automobile's reported mileage, if the automobile is titled as a junk or salvage automobile in another state, and whether the automobile has been reported as a junk or salvage automobile under 49 U.S.C. 30504. Further, the operator of NMVTIS must make relevant information available to states, law enforcement officials, prospective and current purchasers (individual and commercial), and prospective and current insurers. This rule clarifies that the operator of NMVTIS will be responsible for collecting the required information and providing the necessary access to all permitted users.

The Department will instruct the operator that if it is not receiving reporting entity data directly, then it must identify at least three third-party organizations willing to receive reports from reporting entities (junk, salvage, insurance) and to share such data with NMVTIS. The operator also will take steps to ensure data quality to the extent possible and take steps as described in this rule to correct reported data, if not reported by a state, which has the authority to make changes via updates.

The operator will be using the National Information Exchange Model or any successor information-sharing model for all new information exchanges established, and DOJ may require the operator to use Web services for all new connections to NMVTIS.

Services to State Motor Vehicle Title Administrations

The operator will:

• Make available to state motor vehicle title administrations at least two methods of interacting with NMVTIS. States will have the option of participating via ''stand alone'' access, which is a basic Internet site that allows a state to enter a VIN and receive the results of the search. States currently have the option of fully integrating the NMVTIS search function into their title-information systems. This method of access allows state systems to perform the search seamlessly and without specific effort of the titling staff. This method allows updates made after the

title transaction to be shared with the prior state of title and allows real-time updates to NMVTIS as well. The operator also will make available a modified stand-alone access process (that allows for batch inquiries) to central-issue states to support their efficient title administration needs.

- Share with states any and all information in NMVTIS, including any intended export criteria, junk and salvage history, and any other information obtained by the operator (*e.g.*, title history information from other North American title administrations, etc.).
- Provide the states with the greatest amount of flexibility in such things as data standards, mapping, and connection methodology.

Services to Law Enforcement

In particular, the operator of NMVTIS will be responsible for ensuring that state and local law enforcement agencies have access to all title information in or available through NMVTIS, including personal information collected by NMVTIS for law enforcement purposes. A thief can take a stolen, cloned vehicle to a non-participating state and get a valid title by presenting the clone and matching fraudulent ownership documentation to the new state. Thieves often switch the VIN plate (and sometime other VIN stickers) of a stolen motor vehicle with one from a junked car in order to get a valid title for the stolen car. These activities were possible because the states had no instantly updated, reliable way of validating the information on the ownership documentation prior to issuing the new title. Investigations have shown that sophisticated criminal organizations typically employ fraud schemes involving multiple state-title processes and either target non-participating states as the new title-issuing agent or use fraudulent or counterfeit title documents from a non-participating state in order to effect brand washing or cloning. Exported vehicles also have become a key source for cloning activities. NMVTIS will provide law enforcement agencies with access to make inquiries to further their investigations of motor vehicle theft and fraud—including fraud committed against consumers, businesses, and states. This access will allow law enforcement agencies to better identify stolen motor vehicles, enhance their ability to identify vehicle theft rings, identify cases of public corruption, and identify other criminal enterprises involving vehicles. NMVTIS will reduce the ability of organized criminal organizations to obtain fraudulent vehicle registrations by linking state and local authorities with real-time verification of information. This system also will provide an additional tool to identify and investigate international organized criminal and terrorist activity. NMVTIS will assist investigations of vehicles involved in violent crimes, smuggling (narcotics, weapons, undocumented aliens, and currency), and fraud. In addition to providing access to NMVTIS based on a VIN inquiry, the operator also will allow law enforcement agencies to make inquiries based on other search criteria in the system, including the organizations reporting data to the system, individuals owning, supplying, purchasing, or receiving such vehicles (if available), and export criteria.

Services in Support of Consumer Access

The operator of NMVTIS is responsible for ensuring that a means exists for allowing insurers and purchasers to access information, including information regarding brands, junk and salvage history, and odometer readings. Such access shall be provided to individual consumers in a single-VIN search arrangement and to commercial consumers in a single-, multiple-, or batch-VIN search arrangement. As noted above, motor vehicles that incur significant damage are considered ''junk'' or ''salvage.'' Fraud occurs when junk or salvage motor vehicles are presented for sale to purchasers without disclosure of their real condition or history. Not only are unsuspecting purchasers paying more than the motor vehicle is worth, but they do not know if the damaged vehicles have been adequately repaired and are safe to drive. For example, during Hurricane Katrina, thousands of motor vehicles were completely flooded, and many remained under water for weeks before flood waters subsided. Many of these flooded motor vehicles were taken to other states where they were cleaned and sold as purportedly undamaged used cars, despite the damage caused by the flood, which jeopardizes the motor vehicles' electrical and safety systems. In several reported cases, consumers purchased vehicles that had previously been involved in a collision, and airbags were not reinstalled. These consumers were later killed in a collision where the airbags could not deploy because they were no longer present. This fraud has serious consequences, not only for commerce and law enforcement, but also for highway and citizen safety.

The cost for Web-based prospective-purchaser inquiries for individuals shall be nominal and take into consideration the potential that consumers may lack credit cards or Internet access. Consumer-access fees charged by the operator may be in addition to fees that may be charged by other public or private entities participating in providing the service. While this rule does not establish minimum or maximum fees for such consumer access in order to allow it to remain ''market-driven'' and flexible, the Department requires that all consumer-access fees and methods be approved by the Department prior to enactment.

The Department anticipates that the operator will implement a Web-based method of permitting prospective purchasers to access NMVTIS information as required by the Act. Consumer access shall be available to individual and commercial consumers who are considering purchasing a vehicle or who have recently purchased a vehicle. Consumers accessing NMVTIS shall receive an indication of and link to the current state of title, the brand history (name of brand/brand category), the most recent odometer information in the system, and any reports on the subject vehicle from junk or salvage yards.

Privacy and Security Protections for NMVTIS

The operator may not release any personal information to individual prospective purchasers. The operator also will develop a privacy policy that will address the release of this information as well. The operator also will ensure that NMVTIS and associated access services (*i.e.*, secure networks used to facilitate access to personal information included in NMVTIS) meet or exceed technology industry security standards, most notably any relevant Global Justice Information Sharing Initiative standards and recommendations.

Accountability and Transparency

The operator shall publish an annual report describing the performance of the system during the preceding year and shall include a detailed report of NMVTIS expenses and all revenues received as a result of NMVTIS operation. Additionally, the operator (if not the Department of Justice) shall be required to procure an independent financial audit of NMVTIS expenses and revenues during the preceding year. Both the annual performance and budget report and the independent audit report shall be publicly available via *www.NMVTIS.gov*.

Although DOJ has primary enforcement responsibility for the provisions of this rule, the operator

shall conduct regular reviews of reporting compliance by all reporters to assess the extent to which reporting entities are reporting appropriately, documentation is in place, and other requirements of reporting are being met. The operator shall provide the results of such information to DOJ. The operator shall also maintain a publicly available, regularly updated listing of all entities reporting to NMVTIS. Such listing shall include the name of the reporting entity, city/state, contact information, and last-data-reported date.

6. User Fees

Pursuant to 49 U.S.C. 30502(c), NMVTIS is to be ''paid for by user fees and should be self-sufficient and not be dependent on amounts from the United States Government. The amount of fees the operator collects and keeps * * * subject to annual appropriations laws, excluding fees the operator collects and pays to an entity providing information to the operator, may be not more than the costs of operating the System.'' Rather than charge states user fees based on the number of transactions they place with NMVTIS, AAMVA (the operator of NMVTIS) currently employs a ten-tiered fee structure. The fee a particular state is charged depends on the tier in which that state is placed based on the number of currently titled motor vehicles in that state. As a result of the great disparity between the states in their total number of titled motor vehicles, the per-vehicle fee currently charged by the operator of NMVTIS ranges from less than 1 cent per vehicle in the states with the most titled motor vehicles to nearly 7 cents per vehicle in the state with the lowest number of titled motor vehicles. This fee structure was developed by AAMVA and approved by its Board of Directors, comprising state motor vehicle administrators. As noted above, AAMVA is a nonprofit, tax-exempt, educational association representing U.S. and Canadian officials who are responsible for the administration and enforcement of motor vehicle laws.

This rule requires the operator (if not the Department of Justice) to continue to charge user fees to all states based on the total number of motor vehicles titled in the state and to continue the tiered structure. Such a pro rata fee structure simplifies billing for both the states and the operator of NMVTIS. In addition, a state would not be subject to a significant change in user fees if it moves from one tier to another. Last, a pro rata fee structure eliminates any disincentive for states to make title verifications and encourages all states to participate in order to receive the benefits of the system they are funding.

In addition, the Department of Justice requires that the operator charge user fees to all states, even if a state is not a current participant in NMVTIS. In accordance with 49 U.S.C. 30503(a) and (b), each state is required to participate in the system, which includes making titling information available to NMVTIS, conducting title-verification checks before issuing a title, and paying any user fees. Because all states are required to participate in NMVTIS, this rule requires that the operator charge user fees to all states, regardless of their current level of participation. Further, this rule requires that the operator notify states at least one year in advance of user fees and invoice every state at least once per year. This schedule shall remain in place until modified by agreement with DOJ.

Under this rule, and consistent with the Anti-Car Theft Act, users, such as purchasers, insurers, consumers, and other non-governmental entities, may be charged a fee for inquiries they make to NMVTIS. Because of the varying levels of participation by the states, the Department has decided to eliminate the proposed provision prohibiting the operator from charging transaction fees for consumer transactions performed by fully participating states. However, the Department retains the authority to allow the operator to discount such fees for fully participating states. The operator shall not charge any user fees or transaction fees for inquiries made by law enforcement agencies. The operator shall ensure that all third-party providers of NMVTIS information are eligible for the same prices and discounts, based on the product implemented or provided (*e.g.*, single VIN lookup, batch lookup, etc.). The operator shall require that all providers and methods of consumer access include a visible notice and disclaimer, or a link to such a notice or disclaimer, that provides consumers with accurate information on what NMVTIS includes and any limitations in the database. The names of all noncompliant states shall be disclosed to each consumer for purposes of awareness. Providers and methods of consumer access also will include a link to operator-provided information that explains to consumers how NMVTIS works, such as how different reporting streams may explain variances or seemingly conflicting information. Those providers and methods of consumer access also will provide a link to a state's brand definitions if those brands are displayed and the information is available.

The expenses to be recouped by the operator of NMVTIS through its fees will consist of labor costs, data center operations costs, the cost of providing access to authorized users, annual functional-enhancement costs (including labor and hardware), the cost of technical upgrades, costs to comply with the provisions of this rule, and other costs as approved by the Department of Justice in advance of the expense. The operator is authorized to develop a system-enhancement reserve that does not exceed 50% of the annual cost of operating the system for use in ensuring that critical upgrades can be implemented on an emergency basis as necessary. AAMVA currently estimates that the annual cost of operating NMVTIS is approximately $5,650,000. According to DOT's 2005 Highway Statistics, 241,193,974 vehicles were titled in the United States in 2005. Therefore, the cost to fund NMVTIS will average less than 3 cents per motor vehicle title, although states in different tiers may pay slightly different rates. The operator of NMVTIS will inform the states of the applicable fees either through publication in the **Federal Register** or by direct notice or invoicing to the states.

The operator will be required to recalculate its fees on at least a biennial (every two years) basis at least one year in advance of their effective date. Any fees charged to the states would be offset by transaction fees received by the operator. In addition, the total fees charged to the states would be reduced by future funds awarded by the U.S. Government to the operator to assist in implementing the system. Any fees imposed by the operator in connection to NMVTIS must be approved by the Department of Justice.

Notwithstanding individual and batch lookups or inquiries, the operator shall not, under any circumstances, sell a state's entire data set in bulk or sell the entire NMVTIS data set in bulk.

Since Fiscal Year 1997, the Department of Justice, through BJA, has provided over $15 million to AAMVA for NMVTIS implementation. In Fiscal Years 2007–2009, BJA invited states to apply for direct funding from DOJ to support initial NMVTIS implementation. In fiscal years 2007 and 2008, less than six states applied for funds each year. BJA awarded funds to five states in fiscal year 2007 and one state in 2008 to support system implementation. BJA also invited AAMVA, the system operator, to apply for direct funding from BJA in fiscal years 2007 and 2008, to supplement state participation fees received by AAMVA, as authorized under the Anti-

Car Theft Act, and encouraged states to apply through its other funding programs to enhance NMVTIS participation. As a result of these solicitations, funding was awarded to AAMVA to assist with NMVTIS implementation in fiscal years 2007 and 2008. As noted above, funds awarded to the operator of NMVTIS will reduce the amount of user fees that must be imposed to implement NMVTIS once all states are participating.

7. Governance

The Department of Justice may establish a NMVTIS Advisory Board to provide input and recommendations from stakeholders on NMVTIS operations and administration. If created, the Advisory Board's costs would be supported by the operator after approval of the Department of Justice.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Although the reporting requirements imposed by the Anti-Car Theft Act will apply to all small insurance companies and small junk and salvage yard operators that handle junk or salvage automobiles, the Department believes that the incremental cost for these entities to collect VINs and the other required information will be minimal and that the rule will not have a significant economic impact on them. Many insurance companies and junk and salvage yards already capture VINs as a means of positively identifying automobiles and tracking inventory. The additional cost to insurance companies, junk yard operators, and salvage yard operators to report the collected information electronically to NMVTIS is not expected to exceed 1 cent per motor vehicle for most entities after the first year. In the first year only, start-up investments increase this per-vehicle cost to approximately 4 cents per vehicle. For the estimated small number of non-automated reporting entities, a manual reporting process may be required, in which case the additional cost is estimated at 96 cents per vehicle annually. In the first year only, the cost for these entities is estimated at $1.86 per vehicle due to initial investment or start-up needs. Indeed, these costs may be significantly lower or possibly even eliminated altogether if insurance, salvage, and junk data is provided through a third party that may already have access to the data and may be in a position to establish a data-sharing arrangement with NMVTIS in order to reduce the reporting burden on these entities.

Moreover, insurance companies will not be required to provide data on automobiles older than the four previous model years. In addition, junk and salvage yards will not be required to report if they already report the required information to the state and the state makes that information available to the operator. The Department has attempted to minimize the impact of the rule on small businesses by allowing them to use third parties to report the statutorily required information to NMVTIS. In addition, the monthly reporting requirements of this rule only apply to automobiles obtained by the business within the prior month or in cases where an update or correction to previously reported data is needed.

Paperwork Reduction Act

This information collection has been submitted to the Office of Management and Budget (OMB) for review in accordance with the procedures of the Paperwork Reduction Act of 1995, Public Law No. 104–13, 109 Stat. 163. If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in a major increase in costs or prices or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f). Accordingly, this rule has been reviewed by the Office of Management and Budget.

Regulatory Impact Assessment

In 1999, the GAO conducted a review of NMVTIS. The GAO report found that a life-cycle cost and benefits analysis should be performed to determine if further federal funding of NMVTIS was warranted. Accordingly, at the request of the Department of Justice, the Logistics Management Institute conducted such an analysis. The 2001 LMI report found that NMVTIS would achieve significant net benefits if it is fully implemented in all 50 states and the District of Columbia. In addition, the 2006 IJIS Institute report found that: ''the NMVTIS program provides an invaluable benefit to state vehicle administrators and the public community as a whole. Advantages of the program include improving the state titling process, as well as providing key information to consumers and law enforcement agencies.'' Based on these reviews of NMVTIS and the Department's experience with automobile theft and fraud, the Department believes that the full implementation of NMVTIS should reduce the market for stolen motor vehicles, enhance public safety, and reduce fraud. This rule will serve to enhance the efficacy of NMVTIS by implementing the statutory reporting requirements imposed on junk and salvage yards and insurance carriers and clarifying the obligations of the states and the operator of NMVTIS.

The operator of the NMVTIS is entitled to receive revenues from user fees to support the system. Currently, these fees generate approximately $1.5 million annually. AAMVA, however, estimates the annual operating cost of the system to be approximately $5,650,000—depending on necessary system upgrades that may be required and user volume. Therefore, the current AAMVA fee structure under-funds NMVTIS by $4,150,000 according to its estimates. According to the Department of Transportation's 2005 Highway Statistics, 241,193,974 vehicles were titled in the United States in 2005. Therefore, the total cost to the operator to fund NMVTIS ranges from 1 cent to

2.3 cents per motor vehicle title titled in the U.S.

Consequently, the average fees charged to the states by the operator under this proposed rule should be less than 3 cents per vehicle. In most cases, states that choose to integrate the NMVTIS processes of data provision and inquiry into their titling process generally incur one-time upgrade costs to establish these connections. In nearly every case, once a connection to the system is established, data transmission for uploads and inquiries is automated and occurs without recurring costs. With these one-time costs and state fees considered, the costs to states are estimated at 6 cents per vehicle. This scenario includes making the data available to NMVTIS via real-time updates and making inquiries into the system prior to issuing new titles. While the frequency of reporting does not impact costs under this scenario, states can lower their upgrade costs by choosing to integrate the NMVTIS reporting and inquiry requirements into their business rules but not into their electronic titling processes. In these cases, states would see lower costs by establishing a regular reporting/data upload process but not re-engineering their own title-information systems for real-time updates. Under this scenario, instead of a state's title-information system automatically making the NMVTIS inquiry, the title clerk would switch to an internet-enabled PC to perform a web search of NMVTIS via a secure virtual private network (VPN). In addition, the cost is minimized because a state is only required to check out-of-state titles. Moreover, because this type of search is internet-based versus state-title-information system-based, no changes to the state's title-information system is required and therefore there is no cost for this aspect of compliance. For the reporting aspect however (*i.e.*, programming an automated batch upload process via file transfer protocol (FTP)), it is anticipated that states would incur reporting costs of less than 1 cent per vehicle. Assuming the reporting costs for states are 0.005 cents per vehicle and that 241,193,974 vehicles are titled in the United States, the Department estimates that the reporting costs for states is approximately $1,205,970.

The incremental cost to insurance companies and junk- and salvage-yard operators that handle junk or salvage automobiles also is expected to be low. Many insurance companies and junk and salvage yards already capture VINs as a means of positively identifying automobiles and tracking inventory. Additionally, for both the insurance sector and the junk/salvage industry, many companies are already reporting much of the required data to independent third parties who have indicated a willingness to pass this data on to DOJ for NMVTIS use.

According to the NICB, it is estimated that there are approximately 321 insurance groups representing approximately 3,000 insurers that report an estimated 2.4 million salvage and total-loss records annually (based on the most recent three-year average). Furthermore, based on 2007 insurance data, over 60% of these motor vehicles will originate from the ten largest insurance groups. These 3,000 insurers would then be responsible for reporting this total-loss information to NMVTIS if not already reported to a third party that agrees to provide the data to NMVTIS. In those cases where the data is already reported to a state or to a cooperating third party, there is no additional cost to insurance carriers. In cases where this data is not currently reported to a cooperating third party, the carrier would be required to report the data to NMVTIS. With the assumption that the data is already collected in an exportable format, and assuming that NMVTIS would establish a reporting mechanism involving a simple FTP-based solution, the cost to insurance carriers is similar to the state reporting costs of less than 1 cent per vehicle. The FBI previously has estimated that approximately 10.5 million junk and salvage vehicles are handled each year. Assuming that it costs insurance carriers approximately 0.005 cents per vehicle to report and that the insurance carriers are required to report on all 10.5 million junk and salvage vehicles, then the reporting costs to insurance carriers will be approximately $52,500 annually.

Similarly, junk and salvage yard operators that already are reporting to cooperating third parties would not be required to report separately. Thus, NMVTIS would impose no additional burden. For those entities not voluntarily reporting to a cooperating third party, a separate reporting mechanism would be established. Depending on the type of mechanism established (*e.g.*, FTP-based solution, form-fax solution, etc.), the costs will vary. It is assumed that all junk and salvage yard operators already collect much of the information required under the rule, and therefore, it is only the transmission of this data to NMVTIS that will result in costs. The table below summarizes these cost estimates.

Yard size	Reporting method	Initial investment costs	Annual ongoing labor costs	Annual vehicle volume *	Total annual average labor costs per vehicle (cents)	Total first year costs (includes initial investment costs and annual labor costs)
Small (non-automated)	Fax	$90	12 hours per year/ $96.00.	1–200	96	$1.86.
Small (automated)	FTP	0	24 minutes per year/ $3.12.	1–200	3	3 cents.
Medium	FTP	0	24 minutes per year/ $3.12.	201–500	<1	<1 cent.
Large	FTP	250	24 minutes per year/ $3.12.	501–7,800	<1	6 cents.

(* Note: Per-vehicle costs based on an average annual vehicle volumes.)

While it is difficult to estimate how many junk and salvage yards are not automated, the National Salvage Vehicle Reporting Program and other industry representatives estimate that nearly all have some form of data collection even if they do not have automation in place. The National Salvage Vehicle Reporting Program has discussed with many of the inventory-management vendors the assistance that can be made available to establish reliable reporting protocols through its voluntary and independent efforts within the industry. If such assistance is available from these vendors, nearly all junk and salvage yards will have some form of automation and be capable of exporting

and sending monthly reports electronically.

In cases in which small junk and salvage yards have no form of automation or computerized files, the Department assumes that a fax or other data-transmittal process would be needed. This paper-based process would likely incur additional labor costs that would bring the estimated per-vehicle costs for this small number of businesses to approximately 0.96 cents per vehicle (annual labor costs). However, according to industry representatives, the number of junk and salvage yards of this size is relatively small (estimated at 20% of licensed junk and salvage yards) and the number of businesses without any automation is even lower (expected to be less than 1,700 licensed businesses in the U.S.). These businesses would not incur these costs if already reporting this data to a state or another cooperating third party.

Assuming that small junk and salvage yards handle approximately 170,000 vehicles annually (at $0.96 per vehicle annual labor costs) and that the remaining junk and salvage yards handle 10,330,000 vehicles annually (at an average labor cost of 1 cent per vehicle), then the Department estimates that their annual reporting costs will be approximately $266,500.

The Department anticipates that the cost for web-based prospective-purchaser inquiries will be nominal. Similarly, the cost to law enforcement to access NMVTIS also is expected to be minimal because law enforcement will not be charged any direct transaction costs. Law enforcement will access NMVTIS through their existing infrastructure. The only cost will be to the operator of the system based on the number of inquiries received from law enforcement. The expected cost to the operator is less than 12 cents per inquiry.

The Department of Justice also considered possible alternatives to those proposed in the rule. Indeed, pursuant to 49 U.S.C. 30504(c), the Attorney General was required to establish ''procedures and practices to facilitate reporting in the least burdensome and costly fashion'' on insurance carriers and junk and salvage yards. Because of the statutory requirements imposed by the Anti-Car Theft Act, however, the Department of Justice did not have many options regarding the information that must be provided and the scope of the entities that must report the required information. In particular, the information required to be reported by the proposed rule is mandated by the Anti-Car Theft Act. The Department also considered various alternatives for funding NMVTIS, such as a tiered-based fee structure and a transaction-based fee structure. Based on the comments to the proposed rule, the Department believes that a tiered fee structure based on the total number of motor vehicles titled in a state is preferable to these alternatives because it complies with the Anti-Car Theft Act and minimizes any burden imposed on reporting entities.

With regard to all sector reporting requirements, in most cases reducing the reporting timelines from monthly to semi-annually or less will not significantly reduce costs due to the benefits of automated processes. Additionally, the costs that this reduced reporting would incur by enabling theft and fraud to continue far outweighs the benefits. Consumers, states, law enforcement, and others need to know as soon as possible when a vehicle is reported as totaled or salvage to prevent the vehicle from being turned over to another state or consumer with a clean title. Moreover, a monthly reporting cycle is expressly required by statute.

Executive Order 13132

In accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement. The rule does not impose substantial direct compliance costs on state and local governments and does not preempt state law. In formulating this rule, the Department has worked closely with AAMVA regarding the implementation of NMVTIS.

Executive Order 12988

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

List of Subjects

28 CFR Part 25

Crime, Law enforcement, Motor vehicles safety, Motor vehicles, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510 and, for the reasons set forth in the preamble, part 25 of chapter I of title 28 of the Code of Regulations is amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

■ 1. The Authority citation for part 25 is revised to read as follows:

Authority: Public Law 103–159, 107 Stat. 1536, 49 U.S.C. 30501–30505; Public Law 101–410, 104 Stat. 890, as amended by Public Law 104–134, 110 Stat. 1321.

■ 2. Add a new subpart B to read as follows:

Subpart B—National Motor Vehicle Title Information System (NMVTIS)

Sec.
25.51 Purpose and authority.
25.52 Definitions.
25.53 Responsibilities of the operator of NMVTIS.
25.54 Responsibilities of the States.
25.55 Responsibilities of insurance carriers.
25.56 Responsibilities of junk yards and salvage yards and auto recyclers.
25.57 Erroneous junk or salvage reporting.

Subpart B—National Motor Vehicle Title Information System (NMVTIS)

§ 25.51 Purpose and authority.

The purpose of this subpart is to establish policies and procedures implementing the National Motor Vehicle Title Information System (NMVTIS) in accordance with title 49 U.S.C. 30502. The purpose of NMVTIS is to assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles into interstate commerce, protect states and individual and commercial consumers from fraud, reduce the use of stolen vehicles for illicit purposes including fundraising for criminal enterprises, and provide consumer protection from unsafe vehicles.

§ 25.52 Definitions.

For purposes of this subpart B:

Acquiring means owning, possessing, handling, directing, or controlling.

Automobile has the same meaning given that term in 49 U.S.C. 32901(a).

Certificate of title means a document issued by a state showing ownership of an automobile.

Insurance carrier means an individual or entity engaged in the business of underwriting automobile insurance.

Junk automobile means an automobile that—

(1) Is incapable of operating on public streets, roads, and highways; and

(2) Has no value except as a source of parts or scrap.

Junk yard means an individual or entity engaged in the business of acquiring or owning junk automobiles for—

(1) Resale in their entirety or as spare parts; or

(2) Rebuilding, restoration, or crushing.

Motor vehicle has the same meaning given that term in 49 U.S.C. 3102(6).

NMVTIS means the National Motor Vehicle Title Information System.

Operator means the individual or entity authorized or designated as the operator of NMVTIS under 49 U.S.C. 30502(b), or the office designated by the Attorney General, if there is no authorized or designated individual or entity.

Purchaser means the individual or entity buying an automobile or financing the purchase of an automobile. For purposes of this subpart, purchasers include dealers, auction companies or entities engaged in the business of purchasing used automobiles, lenders financing the purchase of new or used automobiles, and automobile dealers.

Salvage automobile means an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage. Salvage automobiles include automobiles determined to be a total loss under the law of the applicable jurisdiction or designated as a total loss by an insurer under the terms of its policies, regardless of whether or not the ownership of the vehicle is transferred to the insurance carrier.

Salvage yard means an individual or entity engaged in the business of acquiring or owning salvage automobiles for—

(1) Resale in their entirety or as spare parts; or

(2) Rebuilding, restoration, or crushing.

Note to definition of ''Salvage yard'': For purposes of this subpart, vehicle remarketers and vehicle recyclers, including scrap vehicle shredders and scrap metal processors as well as ''pull- or pick-apart yards,'' salvage pools, salvage auctions, and other types of auctions handling salvage or junk vehicles (including vehicles declared a ''total loss''), are included in the definition of ''junk or salvage yards.''

State means a state of the United States or the District of Columbia.

Total loss means that the cost of repairing such vehicles plus projected supplements plus projected diminished resale value plus rental reimbursement expense exceeds the cost of buying the damaged motor vehicle at its pre-accident value, minus the proceeds of selling the damaged motor vehicle for salvage.

VIN means the vehicle identification number;

§ 25.53 Responsibilities of the operator of NMVTIS.

(a) By no later than March 31, 2009, the operator shall make available:

(1) To a participating state on request of that state, information in NMVTIS about any automobile;

(2) To a Government, state, or local law enforcement official on request of that official, information in NMVTIS about a particular automobile, junk yard, or salvage yard;

(3) To a prospective purchaser of an automobile on request of that purchaser, information in NMVTIS about that automobile; and

(4) To a prospective or current insurer of an automobile on request of that insurer, information in NMVTIS about the automobile.

(b) NMVTIS shall permit a user of the system to establish instantly and reliably:

(1) The validity and status of a document purporting to be a certificate of title;

(2) Whether an automobile bearing a known VIN is titled in a particular state;

(3) Whether an automobile known to be titled in a particular state is or has been a junk automobile or a salvage automobile;

(4) For an automobile known to be titled in a particular state, the odometer mileage disclosure required under 49 U.S.C. 32705 for that automobile on the date the certificate of title for that automobile was issued and any later mileage information, if noted by the state; and

(5) Whether an automobile bearing a known VIN has been reported as a junk automobile or a salvage automobile under 49 U.S.C. 30504.

(c) The operator is authorized to seek and accept, with the concurrence of the Department of Justice, additional information from states and public and private entities that is relevant to the titling of automobiles and to assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles and parts into interstate commerce. The operator, however, may not collect any social security account numbers as part of any of the information provided by any state or public or private entity. The operator may not make personally identifying information contained within NMVTIS, such as the name or address of the owner of an automobile, available to an individual prospective purchaser. With the approval of the Department of Justice, the operator may allow public and private entities that provide information to NMVTIS to query the system if such access will assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles and parts into interstate commerce.

(d) The operator shall develop and maintain a privacy policy that addresses the information in the system and how personal information shall be protected. DOJ shall review and approve this privacy policy.

(e) The means by which access is provided by the operator to users of NMVTIS must be approved by the Department of Justice.

(f) The operator shall biennially establish and at least annually collect user fees from the states and users of NMVTIS to pay for its operation, but the operator may not collect fees in excess of the costs of operating the system. The operator is required to recalculate the user fees on a biennial basis. After the operator establishes its initial user fees for the states under this section, subsequent state user fees must be established at least one year in advance of their effective date. Any user fees established by the operator must be established with the approval of the Department of Justice. The operator of NMVTIS will inform the states of the applicable user fees either through publication in the **Federal Register** or by direct notice or invoice to the states.

(1) The expenses to be recouped by the operator of NMVTIS will consist of labor costs, data center operations costs, the cost of providing access to authorized users, annual functional enhancement costs (including labor and hardware), costs necessary for implementing the provisions of this rule, the cost of technical upgrades, and other costs approved in advance by the Department of Justice.

(2) User fees collected from states should be based on the states' pro rata share of the total number of titled motor vehicles based on the Highway Statistics Program of the Federal Highway Administration, U.S. Department of Transportation, except in cases where states did not report to that program, in which case the states shall make available the most recent statistics for motor vehicle title registrations.

(3) All states, regardless of their level of participation, shall be charged user fees by the operator.

(4) No fees shall be charged for inquiries from law enforcement agencies.

(g) The operator will establish procedures and practices to facilitate reporting to NMVTIS in the least burdensome and costly fashion. If the operator is not the Department of Justice, the operator must provide an annual report to the Department of Justice detailing the fees it collected and how it expended such fees and other

funds to operate NMVTIS. This report must also include a status report on the implementation of the system, compliance with reporting and other requirements, and sufficient detail and scope regarding financial information so that reasonable determinations can be made regarding budgeting and performance. The operator shall procure an independent financial audit of NMVTIS revenues and expenses on an annual basis. The Department of Justice will make these reports available for public inspection.

§ 25.54 Responsibilities of the States.

(a) Each state must maintain at least the level of participation in NMVTIS that it had achieved as of January 1, 2009. By no later than January 1, 2010, each state must have completed implementation of all requirements of participation and provide, or cause to be provided by an agent or third party, to the designated operator and in an electronic format acceptable to the operator, at a frequency of once every 24 hours, titling information for all automobiles maintained by the state. The titling information provided to NMVTIS must include the following:

(1) VIN;

(2) Any description of the automobile included on the certificate of title (including any and all brands associated with such vehicle);

(3) The name of the individual or entity to whom the certificate was issued;

(4) Information from junk or salvage yard operators or insurance carriers regarding the acquisition of junk automobiles or salvage automobiles, if this information is being collected by the state; and

(5) For an automobile known to be titled in a particular state, the odometer mileage disclosure required under 49 U.S.C. 32705 for that automobile on the date the certificate of title for that automobile was issued and any later mileage information, if noted by the state.

(b) With the approval of the operator and the state, the titling information provided to NMVTIS may include any other information included on the certificates of title and any other information the state maintains in relation to these titles.

(c) By no later than January 1, 2010, each state shall establish a practice of performing a title verification check through NMVTIS before issuing a certificate of title to an individual or entity claiming to have purchased an automobile from an individual or entity in another state or in cases of title transfers. The check will consist of—

(1) Communicating to the operator the VIN of the automobile for which the certificate of title is sought;

(2) Giving the operator an opportunity to communicate to the participating state the results of a search of the information and using the results to determine the validity and status of a document purporting to be a certification of title, to determine whether the automobile has been a junk or salvage vehicle or has been reported as such, to compare and verify the odometer information presented with that reported in the system, and to determine the validity of other information presented (*e.g.*, lien-holder status, etc.).

(d) By January 1, 2010, those states not currently paying user fees will be responsible for paying user fees as established by the operator to support NMVTIS.

§ 25.55 Responsibilities of insurance carriers.

(a) By no later than March 31, 2009, and on a monthly basis as designated by the operator, any individual or entity acting as an insurance carrier conducting business within the United States shall provide, or cause to be provided on its behalf, to the operator and in a format acceptable to the operator, a report that contains an inventory of all automobiles of the current model year or any of the four prior model years that the carrier, during the past month, has obtained possession of and has decided are junk automobiles or salvage automobiles. An insurance carrier shall report on any automobiles that it has determined to be a total loss under the law of the applicable jurisdiction (*i.e.* , state) or designated as a total loss by the insurance company under the terms of its policies.

(b) The inventory must contain the following information:

(1) The name, address, and contact information for the reporting entity (insurance carrier);

(2) VIN;

(3) The date on which the automobile was obtained or designated as a junk or salvage automobile;

(4) The name of the individual or entity from whom the automobile was obtained and who possessed it when the automobile was designated as a junk or salvage automobile; and

(5) The name of the owner of the automobile at the time of the filing of the report.

(c) Insurance carriers are strongly encouraged to provide the operator with information on other motor vehicles or other information relevant to a motor vehicle's title, including the reason why the insurance carrier obtained possession of the motor vehicle. For example, the insurance carrier may have obtained possession of a motor vehicle because it had been subject to flood, water, collision, or fire damage, or as a result of theft and recovery. The provision of information provided by an insurance carrier under this paragraph must be pursuant to a means approved by the operator.

(d) Insurance carriers whose required data is provided to the operator through an operator-authorized third party in a manner acceptable to the operator are not required to duplicate such reporting. For example, if the operator and a private third-party organization reach agreement on the provision of insurance data already reported by insurance to the third party, insurance companies are not required to subsequently report the information directly into NMVTIS.

§ 25.56 Responsibilities of junk yards and salvage yards and auto recyclers.

(a) By no later than March 31, 2009, and continuing on a monthly basis as designated by the operator, any individual or entity engaged in the business of operating a junk yard or salvage yard within the United States shall provide, or cause to be provided on its behalf, to the operator and in a format acceptable to the operator, an inventory of all junk automobiles or salvage automobiles obtained in whole or in part by that entity in the prior month.

(b) The inventory shall include the following information:

(1) The name, address, and contact information for the reporting entity (junk, salvage yard, recycler);

(2) VIN;

(3) The date the automobile was obtained;

(4) The name of the individual or entity from whom the automobile was obtained;

(5) A statement of whether the automobile was crushed or disposed of, for sale or other purposes, to whom it was provided or transferred, and if the vehicle is intended for export out of the United States.

(c) Junk and salvage yards, however, are not required to report this information if they already report the information to the state and the state makes the information required in this rule available to the operator.

(d) Junk and salvage yards may be required to file an update or supplemental report of final disposition of any automobile where final disposition information was not available at the time of the initial report

filing, or if their actual disposition of the automobile differs from what was initially reported.

(e) Junk and salvage yards are encouraged to provide the operator with similar information on motor vehicles other than automobiles that they obtain that possess VINs.

(f) Junk- and salvage-yard operators whose required data is provided to the operator through an operator-authorized third party (*e.g.*, state or other public or private organization) in a manner acceptable to the operator are not required to duplicate such reporting. In addition, junk and salvage yards are not required to report on an automobile if they are issued a verification under 49 U.S.C. 33110 stating that the automobile or parts from the automobile are not reported as stolen.

(g) Such entities must report all salvage or junk vehicles they obtain, including vehicles from or on behalf of insurance carriers, which can be reasonably assumed are total loss vehicles. Such entities, however, are not required to report any vehicle that is determined not to meet the definition of salvage or junk after a good-faith physical and value appraisal conducted by qualified appraisal personnel, so long as such appraisals are conducted entirely independent of any other interests, persons or entities. Individuals and entities that handle less than five vehicles per year that are determined to be salvage, junk, or total loss are not required to report under the salvage-yard requirements.

(h) Scrap metal processors and shredders that receive automobiles for recycling where the condition of such vehicles generally prevent VINs from being identified are not required to report to the operator if the source of each vehicle has already reported the vehicle to NMVTIS. In cases where a supplier's compliance with NMVTIS cannot be ascertained, however, scrap metal processors and shredders must report these vehicles to the operator based on a visual inspection if possible. If the VIN cannot be determined based on this inspection, scrap metal processors and shredders may rely on primary documentation (*i.e.*, title documents) provided by the vehicle supplier.

§ 25.57 Erroneous junk or salvage reporting.

(a) In cases where a vehicle is erroneously reported to have been salvage or junk and subsequently destroyed (*i.e.*, crushed), owners of the legitimate vehicles are encouraged to seek a vehicle inspection in the current state of title whereby inspection officials can verify via hidden VINs the vehicle's true identity. Owners are encouraged to file such inspection reports with the current state of title and to retain such reports so that the vehicle's true history can be documented.

(b) To avoid the possibility of fraud, the operator may not allow any entity to delete a prior report of junk or salvage status.

Dated: January 23, 2009.

Mark Filip,

Acting Attorney General.

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Federal Register

Friday,
January 30, 2009

Part IV

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Part 1806

Notice of Funds Availability; Notice; Bank Enterprise Award Program; Interim Rule

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting applications for the FY 2009 funding round of the Bank Enterprise Award (BEA) Program.

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CDFA) Number: 21.021.

Dates: Applications for the FY 2009 funding round must be received by 11:59 p.m. ET on March 13, 2009. Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOFA. Applications received after 11:59 p.m. ET on the applicable deadline will be rejected.

Executive Summary: This NOFA is issued in connection with the FY 2009 funding round of the BEA Program. Through the BEA Program, the Community Development Financial Institutions Fund (the Fund) encourages Insured Depository Institutions to increase their levels of loans, investments, services, and technical assistance within Distressed Communities, and financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance, during a specified period. Actual funding for this program is contingent upon available resources. Publication of this NOFA does not obligate the Fund or the Department of the Treasury to make any award or to obligate any available funds.

I. Funding Opportunity Description

A. Baseline Period and Assessment Period Dates

A BEA Program award is based on an Applicant's increases in Qualified Activities from the Baseline Period to the Assessment Period. For the FY 2009 funding round, the Baseline Period is calendar year 2007 (January 1, 2007 through December 31, 2007), and the Assessment Period is calendar year 2008 (January 1, 2008 through December 31, 2008).

B. Program Regulations

The regulations governing the BEA Program have been published in this issue of the **Federal Register**, and replace, in their entirety, the regulations found at 12 CFR part 1806 (the Interim Rule or Rule) and provide guidance on evaluation criteria and other requirements of the BEA Program. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the application related to this NOFA. Each capitalized term in this NOFA is more fully defined either in the Interim Rule or the application.

C. Qualified Activities

Qualified Activities are defined in the Interim Rule to include CDFI Related Activities, Distressed Community Financing Activities, and Service Activities (12 CFR 1806.103(nn)). CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities (12 CFR 1806.103(r)). Distressed Community Financing Activities (12 CFR 1806.103(u)) include Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; and Small Business Loans and related Project Investments. Service Activities (12 CFR 1806.103(nn)) include Deposit Liabilities, Financial Services, Community Services, Targeted Financial Services, and Targeted Retail Savings/Investment Products.

When calculating BEA Program award amounts, the Fund will count only the amount that an Applicant reasonably expects to disburse for a Qualified Activity within 12 months from the end of the Assessment Period. Subject to the requirements outlined in Section I. G.1. of this NOFA, in the case of Commercial Real Estate Loans and CDFI Related Activities, the total principal amount of the transaction must be $10 million or less to be considered a Qualified Activity. Qualified Activities funded with prior funding round Award dollars shall not constitute a Qualified Activity for the purposes of calculating or receiving an Award.

D. Designation of Distressed Community

An Applicant applying for a BEA Program award for carrying out Distressed Community Financing Activities or Services Activities must designate one or more Distressed Communities. Each CDFI Partner that is the recipient of CDFI Support Activities from an Applicant must designate a Distressed Community. The CDFI Partner can identify a different Distressed Community than the Applicant. Applicants providing Equity Investments to a CDFI, and CDFI Partners that receive Equity Investments, are not required to designate Distressed Communities. Please note that a Distressed Community as defined by the BEA Program is not necessarily the same as an Investment Area as defined by the CDFI Program, or a Low-Income Community as defined by the New Markets Tax Credit (NMTC) Program.

1. *Definition of Distressed Community:* A Distressed Community must meet certain minimum geographic area and distress requirements, which are defined in the Interim Rule at 12 CFR 1806.103(t) and more fully described in 12 CFR 1806.200.

2. *Designation of Distressed Community:* An Applicant or CDFI Partner (as appropriate) shall designate an area as a Distressed Community by:

(a) Selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(b) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (1) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

An Applicant engaging in Distressed Community Financing Activities or Service Activities designates a Distressed Community by submitting a Map of the Distressed Community as described in the applicable BEA Program application. A CDFI Partner designates a Distressed Community by submitting a Map of the Distressed Community as described in the applicable BEA Program application.

Applicants and CDFI Partners must use the CDFI Fund Information Mapping System (CIMS) to designate Distressed Communities. CIMS is accessed through *myCDFIFund* and contains step-by-step instructions on how to create and print the aforementioned Map of the Distressed Community. *MyCDFIFund* is an electronic interface that is accessed through the Fund's Web site (*www.cdfifund.gov*). Instructions for registering with *myCDFIFund* are available on the Fund's Web site. If you have any questions or problems with registering, please contact the CDFI Fund IT HelpDesk by telephone at (202) 622–2455, or by e-mail to *ITHelpDesk@cdfi.treas.gov.*

E. CDFI Related Activities

CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities provided to eligible CDFI Partners. In addition to regulatory requirements, this NOFA provides the following:

1. *Eligible CDFI Partner:* CDFI Partner is defined as a CDFI that has been provided assistance in the form of CDFI Related Activities by an Applicant (12 CFR 1806.103(p)). For the purposes of this NOFA, an eligible CDFI Partner is an entity that has been certified as a CDFI as of the end of the applicable Assessment Period.

2. *Limitations on eligible Qualified Activities provided to certain CDFI Partners:* An Applicant that is also a CDFI cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

3. *Certificates of Deposit:* Section 1806.103(r) of the Interim Rule states that any certificate of deposit placed by an Applicant or its Subsidiary in a CDFI that is a bank, thrift, or credit union must be: (i) Uninsured and committed for at least three years; or (ii) insured, committed for a term of at least three years, and provided at an interest rate that is materially below market rates, in the determination of the Fund.

(a) For purposes of this NOFA, ''materially below market interest rate'' is defined as an annual percentage rate that does not exceed 100 percent of yields on Treasury securities at constant maturity as interpolated by Treasury from the daily yield curve and available on the Treasury Web site at *www.treas.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml*. For example, for a three-year certificate of deposit, Applicants should use the three-year rate U.S. Government securities, Treasury Yield Curve Rate posted for that business day. The Treasury updates the Web site daily at approximately 5:30 p.m. ET. Certificates of deposit placed prior to that time may use the rate posted for the previous business day. The annual percentage rate on a certificate of deposit should be compounded quarterly, semi-annually, or annually. In addition, Applicants should determine whether a certificate of deposit is insured based on the total amount that the Applicant or its Subsidiary has on deposit on the day the certificate of deposit is placed. The Applicant must note, in its BEA Program application, whether the certificate of deposit is insured or uninsured.

(b) For purposes of this NOFA, a deposit placed by an Applicant directly with a CDFI Partner that participates in a deposit network or service may be treated as eligible under this NOFA if it otherwise meets the criteria for deposits in 1806.103(r) and the CDFI Partner retains the full amount of the initial deposit or an amount equivalent to the full amount of the initial deposit through a deposit network exchange transaction.

F. Equity-Like Loans

An Equity-Like Loan is a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment, as such characteristics may be specified by the Fund (12 CFR 1806.103(z)). For purposes of this NOFA, Equity-Like Loans must meet the following characteristics:

1. At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the CDFI borrower continues to be financially sound and carry out a community development mission;

2. Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;

3. Failure to pay principal or interest (except at maturity) will not automatically result in a default of the loan agreement; and

4. The loan must be subordinated to all other debt except for other Equity-Like Loans.

Notwithstanding the foregoing, the Fund reserves the right to determine, in its sole discretion and on a case-by-case basis, whether an instrument meets the above-stated characteristics of an Equity-Like Loan. Applicants must submit all documents evidencing loans that they wish to be considered Equity-Like Loans to the Fund for review, no later than 45 days prior to the end of the applicable Assessment Period. The Fund will not redraft instruments, provide language for Applicants, or render legal opinions related to Equity-Like Loans. However, the Fund, in its sole discretion, may comment as to the consistency of a proposed instrument with the above-stated Equity-Like Loan characteristics. Such information will allow Applicants, if they so choose, to modify the instruments to conform to the program requirements prior to the end of the Assessment Period. The Fund cannot guarantee timely feedback to Applicants that submit the aforementioned documentation less than 45 days prior to the end of the applicable Assessment Period.

G. Distressed Community Financing Activities and Service Activities

Distressed Community Financing Activities include Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments, Education Loans, Commercial Real Estate Loans and related Project Investments, Home Improvement Loans, and Small Business Loans and related Project Investments (12 CFR 1806.103(u)). In addition to the regulatory requirements, this NOFA provides the following additional requirements.

1. *Commercial Real Estate Loans and related Project Investments:* For purposes of this NOFA, eligible Commercial Real Estate Loans (12 CFR 1806.103(l)) and related Project Investments (12 CFR 1806.103(ll)) are generally limited to transactions with a total principal value of $10 million or less. Notwithstanding the foregoing, the Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review. In such cases, the Fund may request that the Applicant provide a separate narrative, or other information, to demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not currently provided to the Distressed Community.

2. *Reporting certain Financial Services:*

(a) The Fund will value the administrative cost of providing certain Financial Services using the following per unit values:

(i) $100.00 per account for Targeted Financial Services;

(ii) $50.00 per account for checking and savings accounts that do not meet the definition of Targeted Financial Services;

(iii) $5.00 per check cashing transaction;

(iv) $25,000 per new ATM installed at a location in a Distressed Community;

(v) $2,500 per ATM operated at a location in a Distressed Community;

(vi) $250,000 per new retail bank branch office opened in a Distressed Community; and

(vii) In the case of Applicants engaging in Financial Services activities not described above, the Fund will determine the unit value of such services.

(b) When reporting the opening of a new retail bank branch office, the Applicant must certify that it has not operated a retail branch in the same census tract in which the new retail branch office is being opened in the past three years, and that such new branch will remain in operation for at least the next five years.

(c) Financial Service Activities must be provided by the Applicant to Low- and Moderate-Income Residents. An Applicant may determine the number of

Low- and Moderate-Income individuals who are recipients of Financial Services by either:

(i) Collecting income data on its Financial Services customers; or

(ii) Certifying that the Applicant reasonably believes that such customers are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the Applicant made this determination.

H. Integrally Involved Enterprises: Integrally Involved Means

(i) For a CDFI Partner, having provided at least five percent of financial transactions or dollars transacted (*e.g.*, loans or equity investments as defined in 12 CFR 1805.104(s)), or five percent of Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the applicable NOFA, or having transacted at least ten percent of financial transactions (*e.g.*, loans or equity investments) in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA, or demonstrating that it has attained at least five percent of market share for a particular product in said Distressed Community (such as at least five percent of home mortgages originated in said Distressed Community) in at least one of the three calendar years preceding the date of the applicable NOFA; or

(ii) For a non-CDFI, having directed at least five percent of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the Applicant in each of the three calendar years preceding the date of the applicable NOFA, or having provided at least ten percent of its business activities in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA.

II. Award Information

A. Award Amounts

Subject to funding availability, the Fund expects that it may award approximately $20 million for FY 2009 BEA Program awards, in appropriated funds under this NOFA. The Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available. Under this NOFA, the Fund anticipates a maximum award amount of $500,000 per Applicant. The Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount. The Fund also reserves the right to impose a minimum award amount. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

When calculating award amounts, the Fund will count only the amount that an Applicant reasonably expects to disburse on a transaction within 12 months from the end of the Assessment Period.

B. Types of Awards

BEA Program awards are made in the form of grants.

C. Notice of Award and Award Agreement

Each awardee under this NOFA must sign a Notice of Award and an Award Agreement prior to disbursement by the Fund of award proceeds. The Notice of Award and the Award Agreement contain the terms and conditions of the award. For further information, see Section IX. of this NOFA.

III. Eligibility

A. Eligible Applicants

Eligible Applicants for the BEA Program must be Insured Depository Institutions, as defined in 12 U.S.C. 1813(c)(2). An Applicant must be FDIC-insured by December 31, 2008 for the FY 2009 funding round to be eligible for consideration for a BEA Program award under this NOFA.

1. *Prior awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. For purposes of this section, the Fund will consider an Affiliate to be any entity that Controls (as such term is defined in paragraph (g) below) the Applicant, is Controlled by the Applicant or is under common Control with the Applicant (as determined by the Fund) and any entity otherwise identified as an affiliate by the Applicant in its Application under this NOFA. Prior BEA Program awardees and prior awardees of other Fund programs are eligible to apply under this NOFA, except as follows:

(a) *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an Applicant if the Applicant or its Affiliate is a prior Fund awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award or allocation agreement(s), as of the application deadline(s) of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

(b) *Pending resolution of noncompliance:* If an Applicant that is a prior awardee or allocatee under any Fund program: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if an Affiliate of the Applicant that is a prior Fund awardee or allocate under any Fund program: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund will consider the applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

(c) *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, award or allocation agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline, the Fund has made a final determination that an Affiliate of the Applicant: (i) Is a prior Fund awardee or allocatee under any Fund program, and (ii) has been determined by the Fund to be in default of a previously executed assistance, award or allocation agreement(s). Such entities will be ineligible to apply for an award pursuant to this NOFA so long as the Applicant's, or its Affiliate's, prior

award or allocation remains in default status or such other time period as specified by the Fund in writing.

(d) *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund awardee or allocatee under any Fund program if, within the 12-month period prior to the application deadline of this NOFA, the Fund has made a final determination that such Applicant's prior award or allocation terminated in default of the assistance, award or allocation agreement and the Fund has provided written notification of such determination to such Applicant. Further, an entity is not eligible to apply for an award pursuant to this NOFA if, within the 12-month period prior to the application deadline of this NOFA, the Fund has made a final determination that an Affiliate of the Applicant is a prior Fund awardee or allocatee under any Fund program whose award or allocation terminated in default of the assistance, award or allocation agreement and the Fund has provided written notification of such determination to the defaulting entity.

(e) *Undisbursed balances:* For the purposes of this section, ''undisbursed funds'' is defined as: (i) In the case of prior BEA Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the Awardee, and (ii) in the case of prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the awardee.

''Undisbursed funds'' does not include (i) tax credit allocation authority allocated through the New Markets Tax Credit Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the awardee as of the application deadline of this NOFA; and (iii) any award funds for an award that has been terminated, expired, rescinded, or deobligated by the Fund.

The Fund will not consider an application submitted by an Applicant that is a prior Fund awardee under any Fund program if the Applicant has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if an Affiliate of the Applicant is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA. In the case where an Affiliate of the Applicant is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliates when calculating the amount of undisbursed funds.

(f) For purposes of this NOFA, the term ''Control'' means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities as defined in 12 CFR 1805.104(mm) of any legal entity, directly or indirectly or acting through one or more other persons; (2) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any legal entity; or (3) the power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any legal entity.

(g) *Contact the Fund:* Accordingly, Applicants that are prior awardees and/or allocatees under any Fund program are advised to: (i) Comply with requirements specified in assistance, award and/or allocation agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). All outstanding reports, compliance or disbursement questions should be directed to Compliance & Monitoring Support by e-mail at *cme@cdfi.treas.gov;* by telephone at (202) 622–6330; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through March 11, 2009. The Fund will not respond to Applicants' reporting, compliance or disbursement telephone calls or e-mail inquiries that are received after 5 p.m. ET on March 11, 2009.

2. *Cost sharing and matching fund requirements:* Not applicable.

IV. Application and Submission Information

A. Address To Request Application Package

Applicants may submit applications under this NOFA in paper form (except as provided below for the Report of Transactions). Shortly following the publication of this NOFA, the Fund will make the FY 2009 BEA Program application materials available via Grants.gov.

B. Application Content Requirements

Detailed application content requirements are found in the application related to this NOFA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Additional information, including instructions relating to the submission of the application via Grants.gov and supporting documentation, is set forth in further detail in the application. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the EIN. Incomplete applications will be rejected.

An Applicant may not submit more than one application in response to the FY 2009 funding round.

C. Form of Application Submission

Applicants must submit applications under this NOFA via Grants.gov with certain required documentation via paper according to the instructions in the application. Applications sent by facsimile or by e-mail will not be accepted, except in circumstances that the Fund, in its sole discretion, deems acceptable. In order to submit an application via Grants.gov, Applicants must complete a multi-step registration process. Applicants are encouraged to allow at least two to three weeks to complete the registration process.

MyCDFIFund Accounts: All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface by the applicable Application deadline. Failure to register on MyCDFIFund could result in the Fund being unable to accept the application. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact

information in their myCDFIFund accounts. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

D. Application Submission Dates and Times

1. *Grants.gov Applications:* The deadline for receipt of applications via Grants.gov for the FY 2009 funding round is 11:59 p.m. ET on March 13, 2009. The deadline for receipt of paper documentation at the BPD address specified below is 5 p.m. ET, March 17, 2009. Applications and other required documents and other attachments received after the deadline on the applicable date will be rejected. Please note that the document submission deadlines in this NOFA and/or the funding application are strictly enforced. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services.

V. Intergovernmental Review: Not Applicable

VI. Funding Restrictions: Not Applicable

VII. Addresses

Qualified Activity Documentation and Other Attachments as specified in the applicable BEA Program application must be sent to: CDFI Fund Grants Manager, BEA Program, Bureau of Public Debt, 200 Third Street, Room 10, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. The Fund will not accept applications in its offices in Washington, DC. Applications and attachments received in the Fund's Washington, DC offices will be rejected.

VIII. Application Review Information

A. Priority Factors

Priority Factors are the numeric values assigned to individual types of activity within a category of Qualified Activity. A Priority Factor represents the Fund's assessment of the degree of difficulty, the extent of innovation (including, for example, pricing), and the extent of benefits accruing to the Distressed Community for each type of activity. The Priority Factor works by multiplying the change in a Qualified Activity by its assigned Priority Factor to achieve a ''weighted value.'' This weighted value of the change would be multiplied by the applicable award percentage to yield the award amount for that particular activity. For purposes of this NOFA, the Fund is establishing Priority Factors for the Distressed Community Financing Activities category only, as follows:

Qualified activities	Priority factor
Affordable Housing Loans	3.0
Education Loans	3.0
Home Improvement Loans	3.0
Small Business Loans and related Project Investments	3.0
Affordable Housing Development Loans and related Project Investments	2.0
Commercial Real Estate Loans and related Project Investments	2.0

B. Award Percentages, Award Amounts, Selection Process

The Interim Rule describes the process for selecting Applicants to receive BEA Program awards and determining award amounts. Applicants will calculate and request an estimated award amount in accordance with a multiple step procedure that is outlined in the Interim Rule (at 12 CFR 1806.202). As outlined in the Interim Rule at 12 CFR 1806.203, the Fund will determine actual award amounts based on the availability of funds, increases in Qualified Activities from the Baseline Period to the Assessment Period, and each Applicant's priority ranking. In calculating the increase in Qualified Activities, the Fund will determine the eligibility of each transaction for which an Applicant has applied for a BEA Program award. In some cases, the actual award amount calculated by the Fund may not be the same as the estimated award amount requested by the Applicant.

In the CDFI Related Activities category (except for an Equity Investment or Equity-Like Loan), if an Applicant is a CDFI, such estimated award amount will be equal to 18 percent of the increase in Qualified Activity for the category. If an Applicant is not a CDFI, such estimated award amount will be equal to 6 percent of the increase in Qualified Activity for the category. Notwithstanding the foregoing, for an Applicant that is a CDFI and for an Applicant that is not a CDFI, the award percentage applicable to an Equity Investment, Equity-Like Loan, or Grant in a CDFI shall be 15 percent of the increase in Qualified Activity for the category. For the Distressed Community Financing Activities and Service Activities categories, if an Applicant is a CDFI, such estimated award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activity for the category. If an Applicant is not a CDFI, such estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity for the category.

If the amount of funds available during the funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in the Interim Rule at 12 CFR 1806.203(b). *This process gives funding priority to Applicants that undertake activities in the following order:*

1. CDFI Related Activities,

2. Distressed Community Financing Activities, and

3. Service Activities.

Within each category, Applicants will be ranked according to the ratio of the actual award amount calculated by the Fund for the category to the total assets of the Applicant. Within the Distressed Community Financing category as well as the Service Activities category, Applicants that are certified CDFIs will be ranked first, followed by Applicants that have carried out such Distressed Community Financing Activities and Service Activities in a Distressed Community that encompasses an Indian Reservation.

The Fund, in its sole discretion: (i) May adjust the estimated award amount that an Applicant may receive; (ii) may establish a maximum amount that may be awarded to an Applicant; and (iii) reserves the right to limit the amount of an award to any Applicant if the Fund deems it appropriate.

For purposes of calculating award disbursement amounts, the Fund will treat Qualified Activities with a total principal amount of less than $250,000 as fully disbursed. For all other Qualified Activities, Awardees will have 12 months from the end of the Assessment Period to make disbursements and 18 months from the end of the Assessment Period to submit to the Fund disbursement requests for the corresponding portion of their awards, after which the Fund will rescind and deobligate any outstanding award balance and said outstanding award balance will no longer be available to the Awardee.

The Fund reserves the right to change its eligibility and evaluation criteria and procedures. If said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site.

There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

C. Certain Limitations on Qualified Activities

(a) Low-Income Housing Tax Credits. Financial assistance provided by an Applicant for which the Applicant receives benefits through Low-Income Housing Tax Credits, authorized pursuant to Section 42 of the Internal Revenue Code, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award.

(b) New Markets Tax Credits. Financial assistance provided by an Applicant for which the Applicant receives benefits as an investor in a Community Development Entity that has received an allocation of New Markets Tax Credits, authorized pursuant to Section 45D of the Internal Revenue Code, as amended (26 U.S.C. 45D), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award.

(c) Loan Renewals. Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award if, such financial assistances consist of a loan that has matured and is then renewed by the Applicant.

(d) Prior BEA Awards. Qualified Activities funded with prior funding round Award dollars shall not constitute a Qualified Activity for the purposes of calculating or receiving an Award.

(e) Prior CDFI Program Awards. No CDFI may receive a BEA Program award for activities funded by a CDFI Program award.

IX. Award Administration Information

A. Notice of Award

The Fund will signify its selection of an Applicant as an Awardee by delivering a signed Notice of Award and Award Agreement to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of an award including, but not limited to, the requirement that an Awardee and the Fund enter into an Award Agreement. The Applicant must execute the Notice of Award and return it to the Fund along with the Award Agreement. The Fund reserves the right, in its sole discretion, to rescind its award and Notice of Award if the Awardee fails to return the Notice of Award or Award Agreement, signed by the Authorized Representative of the Awardee, along with any other requested documentation, by the deadline set by the Fund.

By executing a Notice of Award, the Awardee agrees that, if information (including administrative errors) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate.

1. *Failure to meet reporting requirements:* If an Applicant, or its Affiliate, is a prior Fund Awardee or Allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed Assistance, Award or Allocation Agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, until said prior Awardee or Allocatee is current on the reporting requirements in the previously executed Assistance, Award or Allocation Agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or Allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior Fund Awardee or Allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous Assistance, Award, or Allocation agreement, and (ii) the Fund has yet to make a final determination regarding whether or not the entity is in default of its previous Assistance, Award, or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if an Affiliate of the Applicant is a prior Fund Awardee or Allocatee under any Fund program, and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous Assistance, Award, or Allocation Agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous Assistance, Award, or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds pending full resolution, in the sole determination of the Fund, of the noncompliance. If said prior Awardee or Allocatee is unable to meet this requirement, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Award Agreement under this NOFA, the Fund has made a final determination that an Applicant that is a prior Fund Awardee or Allocatee under any Fund program is in default of a previously executed Assistance, Award, or Allocation Agreement(s) and has provided written notification of such determination to the Applicant, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds until said prior Awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said Agreement within a timeframe set by the Fund. Further, if, at any time prior to entering into an Award Agreement under this NOFA, the Fund has made a final determination that an Affiliate of the Applicant is a prior Fund Awardee or Allocatee under any Fund program, and is in default of a previously executed Assistance, Allocation or Award Agreement(s) and has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds until said prior Awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said Agreement within a timeframe set by the Fund. If said prior awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA.

4. *Termination in default:* If, within the 12-month period prior to entering

into an Award Agreement under this NOFA, the Fund has made a final determination that an Applicant that is a prior Fund Awardee or Allocatee under any Fund program whose Award or Allocation terminated in default of such prior Agreement and the Fund has provided written notification of such determination to such organization, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds. Further, if, within the 12-month period prior to entering into an Award Agreement under this NOFA, the Fund has made a final determination that an Affiliate of the Applicant, is a prior Fund Awardee or Allocatee under any Fund program, and whose Award or Allocation terminated in default of such prior Agreement(s) and has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds.

E. Award Agreement

After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of the award; (iii) the approved uses of the award; (iv) performance goals and measures; and (v) reporting requirements for all Awardees. Award Agreements under this NOFA generally will have one-year performance periods. The Award Agreement shall provide that an Awardee shall: (i) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements; (ii) not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements, and (iii) use an amount equivalent to the BEA Award amount for BEA Qualified Activities.

F. Administrative and National Policy Requirements

Not applicable.

G. Reporting and Accounting

1. *Reporting Requirements:* The Fund will collect information, on at least an annual basis, from each Awardee that receives an award over $50,000 through this NOFA including, but not limited to, an Annual Report that comprises the following components: (i) Institution Level Report; (ii) Financial Reports (including an OMB A–133 audit, as applicable); and (iii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Award Agreement. If such other entities or signatories are required to provide Institution Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Award Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Award Agreement and to assess the impact of the CDFI Program. All reports must be electronically submitted to the Fund via the Awardee's my CDFIFund account. The Institution Level Report must be submitted through the Fund's Web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS. All other components of the Annual Report may be submitted electronically, as directed, by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives an award over $50,000 through this NOFA to account for the use of the award. This will require Awardees to establish administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives an Award must provide the Fund with the required and complete and accurate Automated Clearinghouse (ACH) form for its bank account prior to award closing and disbursement.

X. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through close of business March 11, 2009 for the FY 2009 funding round.

The Fund will not respond to questions or provide support concerning the application after 5 p.m. ET on March 11, 2009 for the FY 2009 funding round.

Applications and other information regarding the Fund and its programs may be downloaded and printed from the Fund's Web site at *www.cdfifund.gov.* The Fund will post on its Web site responses to questions of general applicability regarding the BEA Program.

A. *Information Technology Support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from creating a Distressed Community map using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic Support:* If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program office by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. *Grants Management Support:* If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov,* by telephone at (202) 622–8226, by facsimile at (202) 622–9625, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *Compliance and Monitoring Support:* If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at *cme@cdfi.treas.gov,* by telephone at (202) 622–6330, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

E. *Legal Counsel Support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's Web site at *www.cdfifund.gov.* Further, if you wish to review the Award Agreement form document from a prior funding round, you may find it posted on the Fund's Web site (please note that

there may be revisions to the Award Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's Web site should not be relied upon for purposes of this NOFA).

F. *Communication with the CDFI Fund:* The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by e-mail using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, e-mail addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: January 15, 2009.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. E9–1576 Filed 1–29–09; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

RIN 1505–AA91

Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing an interim rule implementing the Bank Enterprise Award (BEA) Program administered by the Community Development Financial Institutions Fund (Fund). The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance, within Distressed Communities and provide financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. This interim rule: amends and simplifies select application requirements, and adds the requirement that BEA award funds be used for BEA Qualified Activities.

DATES: Interim rule effective January 30, 2009; comments must be received on or before March 2, 2009.

ADDRESSES: You may send hard copy comments concerning this interim rule to the Depository Institutions Program Advisor, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. You may also send us comments by e-mail to *cdfihelp@cdfi.treas.gov,* with the subject heading ''BEA Program Comments''. When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov.*

FOR FURTHER INFORMATION CONTACT: Jodie Harris, Depository Institutions Program Advisor, Community Development Financial Institutions Fund, at (202) 622–4499. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

Through the Bank Enterprise Award (BEA) Program, the Community Development Financial Institutions Fund (the Fund) seeks to: strengthen and expand the financial and organizational capacity of CDFIs; provide financial incentives to insured depository institutions to increase their lending and services in Distressed Communities; and increase the flow of private capital into Low- and Moderate-Income areas. Applicants participate in the BEA Program through a competitive process, which evaluates applications based on the value of their increases in certain Qualified Activities. BEA Program Awardees receive award proceeds only after successful completion of the specified Qualified Activities. On February 4, 2003, the Fund published in the **Federal Register** an interim regulation (62 FR 64439) implementing the BEA Program (the current rule).

II. Summary of Changes

Revised Definitions for Categories of Qualified Activities: The interim rule updates the definition of Affordable Housing Development Loans (§ 1806.103(b)); Affordable Housing Loans (§ 1806.103(c)), and Home Improvement Loans (§ 1806.103(ee)); Commercial Real Estate Loans (§ 1806.103(l)); and Small Business Loans (§ 1806. 103(oo)) to include the requirement that the borrower and/or entity financed be located in a Distressed Community (§ 1806.103(t)). Affordable Housing Development Loans are loans related to the development of residential real property that are affordable to Low- and Moderate-Income Eligible Residents. Affordable Housing Loan means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is a Low- and Moderate-Income individual and an Eligible Resident. Home Improvement Loans mean advances of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence where the borrower is an Eligible Resident. Commercial Real Estate Loans are loans secured by real estate and used to finance the acquisition or rehabilitation of a building in a Distressed Community, or the acquisition, construction and or development of property in a Distressed Community, used for commercial purposes. Small Business Loan means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Finance Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) and is located in a Distressed Community.

Award Agreement; Sanctions: Section 1806.300(a) of the interim rule provides that a BEA Program Award recipient shall comply with performance goals that have been established by the Fund. Such performance goals will include the requirement that an Awardee use its BEA Program Award for Qualified Activities under the BEA Program.

III. Rulemaking Analysis

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1559–0005. 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 OMB. This document restates the collections of information without substantive change. Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of

Information and Regulatory Affairs, Washington, DC 20503.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

The Fund is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553, because the BEA Program involves grants and is thereby exempt from the procedural requirements of the APA pursuant to 5 U.S.C. 553(a)(2). The Fund also believes that an immediate effective date is necessary for the convenience of the persons affected. Specifically, an immediate effective date will minimize the risk of confusion on the affected community by ensuring that there will be a single and uniform regulation in effect during the Assessment Period for the upcoming round of the BEA Program.

Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

Catalog of Federal Financial Assistance Number

Bank Enterprise Award Program—21.021.

List of Subjects in 12 CFR Part 1806

Banks, banking, Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Savings associations.

■ For the reasons set forth in the preamble, 12 CFR Part 1806 is revised to read as follows:

PART 1806—BANK ENTERPRISE AWARD PROGRAM

Sec.

Subpart A—General Provisions

1806.100 Purpose.
1806.101 Summary.
1806.102 Relationship to other Community Development Financial Institutions Programs.
1806.103 Definitions.
1806.104 Waiver authority.
1806.105 OMB control number.

Subpart B—Awards

1806.200 Community eligibility and designation.
1806.201 Measuring and reporting Qualified Activities.
1806.202 Estimated award amounts.
1806.203 Selection Process, actual award amounts.
1806.204 Applications for Bank Enterprise Awards.

Subpart C—Terms and Conditions of Assistance

1806.300 Award Agreement; sanctions.
1806.302 Compliance with government requirements.
1806.303 Fraud, waste and abuse.
1806.304 Books of account, records and government access.
1806.305 Retention of records.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

Subpart A—General Provisions

§ 1806.100 Purpose.

The purpose of the Bank Enterprise Award Program is to provide financial assistance to Community Development Financial Institutions, and provide an incentive for insured depository institutions to increase their activities in Distressed Communities.

§ 1806.101 Summary.

(a) Under the Bank Enterprise Award Program, the Fund makes awards to selected Applicants that:

(1) Increase their investments in or other support of Community Development Financial Institutions;

(2) Increase lending and investment activities within Distressed Communities; or

(3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum geographic, poverty and unemployment criteria.

(c) Applicants are selected to participate in the program through a competitive application process. Awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities and must be used for BEA Qualified Activities. All awards shall be made subject to the availability of funding.

§ 1806.102 Relationship to other Community Development Financial Institutions Programs.

Prohibition against double funding. A BEA Applicant may not submit as Qualified Activities any transactions funded with award proceeds from another Fund program.

§ 1806.103 Definitions.

For purposes of this part the following terms shall have the following definitions:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affordable Housing Development Loan* means origination of a loan to finance the acquisition, construction, and/or development of single- or multi-family residential real property, where at least sixty percent of the units in such property are affordable, as may be defined in the applicable NOFA, to Low- and Moderate-Income Eligible Residents.

(c) *Affordable Housing Loan* means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is a Low- and Moderate-Income Eligible Resident. Affordable Housing Loan may also refer to second (or otherwise subordinated) liens or ''soft second'' mortgages, and other similar types of down payment assistance loans but may not necessarily be secured by such property originated for the purpose of facilitating the purchase or improvement of the borrower's primary residence, where such borrower is a Low- and Moderate-Income Eligible Resident.

(d) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(e) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(f) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability in which an Applicant will carry out, or has carried out, Qualified Activities;

(g) *Award Agreement* means a formal agreement between the Fund and an Awardee pursuant to § 1806.300;

(h) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(i) *Bank Enterprise Award (or BEA Program Award)* means an award made to an Applicant pursuant to this part;

(j) *Bank Enterprise Award (or BEA) Program* means the program authorized by section 114 of the Act and implemented under this part;

(k) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(l) *Commercial Real Estate Loan* means an origination of a loan (other than an Affordable Housing Development Loan or Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building in a Distressed Community, or the acquisition, construction and/or development of property in a Distressed Community, used for commercial purposes;

(m) *Community Development Entity (or CDE)* means any Qualified Community Development Entity that meets the requirements set forth at Internal Revenue Code (IRC) § 45D(c) and that has been certified as such by the Fund;

(n) *Community Development Financial Institution (or CDFI)* means an entity that has been certified as a CDFI by the CDFI Fund as of the date specified in the applicable NOFA.

(o) *Community Services* means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant:

(1) Provision of technical assistance and financial education to Eligible Residents regarding managing their personal finances;

(2) Provision of technical assistance and consulting services to newly formed small businesses and nonprofit organizations located in the Distressed Community;

(3) Provision of technical assistance and financial education to, or servicing the loans of, Low- or Moderate-Income homeowners and homeowners that are Eligible Residents; and

(4) Other services provided to Low- and Moderate-Income Eligible Residents or enterprises Integrally Involved in a Distressed Community, as deemed appropriate by the Fund;

(p) *CDFI Partner* means a CDFI that has been provided assistance in the form of CDFI Related Activities by an Applicant;

(q) *CDFI Related Activities* means Equity Investments, Equity-Like Loans and CDFI Support Activities;

(r) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that meets criteria set forth by the Fund in the applicable NOFA, that is Integrally Involved in a Distressed Community, in the form of the origination of a loan, technical assistance, or deposits if such deposits are:

(1) Uninsured and committed for a term of at least three years; or

(2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the Fund) below market rates;

(s) *Deposit Liabilities* means time or savings deposits or demand deposits, accepted from Eligible Residents at offices of the Applicant, or a Subsidiary of the Applicant, located within the Distressed Community. Depository Liabilities may only include deposits held by individuals in transaction accounts (*i.e.*, demand deposits, NOW accounts, automated transfer service accounts and telephone or preauthorized transfer accounts) or non-transaction accounts (*i.e.*, money market deposit accounts, other savings deposits and all time deposits), as defined by the Appropriate Federal Banking Agency;

(t) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200, and such additional criteria as may be set forth in the applicable NOFA;

(u) *Distressed Community Financing Activities* means Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; and Small Business Loans and related Project Investments;

(v) *Education Loan* means an advance of funds to a student, who is an Eligible Resident, for the purpose of financing a college or vocational education.

(w) *Electronic Transfer Account (or ETA)* means an account meeting the requirements, and with respect to which the Applicant has satisfied the requirements, set forth in the **Federal Register** on July 16, 1999 at 64 FR 38510, as such requirements may be amended from time to time;

(x) *Eligible Resident* means an individual that resides in a Distressed Community;

(y) *Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in the applicable NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the Fund;

(z) *Equity-Like Loan* means a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment which meets such criteria as set forth in the applicable NOFA;

(aa) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, new branches, and other comparable services as may be specified by the Fund in the applicable NOFA, that are provided by the Applicant to Low- and Moderate-Income Eligible Residents or enterprises Integrally Involved in the Distressed Community;

(bb) *Fund* means the Community Development Financial Institutions Fund, established under section 104(a) of the Act (12 U.S.C. 4703(a));

(cc) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund;

(dd) *Home Improvement Loan* means an advance of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence;

(ee) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq*), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

(ff) *Individual Development Account (or IDA)* means an account that meets the requirements, and with respect to the provision of which Applicant has satisfied the requirements, set forth in the U.S. Department of Health and Human Services Program Announcement OCS–2000–04, published on December 14, 1999 in the **Federal Register** at 64 FR 69824, as such requirements may be amended from time to time;

(gg) *Integrally Involved* means:

(i) For a CDFI Partner, having provided or transacted the percentage of financial transactions or dollars (*e.g.*, loans or equity investments as defined in 12 CFR 1805.104(s)), or Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, or having attained the percentage of market share for a particular product in a Distressed Community, set forth in the applicable NOFA; or

(ii) For a non-CDFI, having directed the percentage of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to

serving the Distressed Community identified by the Applicant, or having provided the percentage of its business activities in said Distressed Community, set forth in the applicable NOFA.

(hh) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development, with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

(ii) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d), and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(jj) *Notice of Funds Availability (or NOFA)* means the public notice, published by the Fund in the **Federal Register**, that announces the availability of BEA Program funds for a particular funding round and that advises Applicants with respect to obtaining application materials, establishes application submission deadlines, and establishes other requirements or restrictions applicable for the particular funding round;

(kk) *Priority Factor* means a numeric value assigned to each type of activity within each category of Qualified Activity, as may be established by the Fund in the applicable NOFA. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity;

(ll) *Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is Integrally Involved in a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, including Affordable Housing Development Loans, Affordable Housing Loans, Commercial Real Estate Loans, and Small Business Loans;

(mm) *Qualified Activities* means CDFI Related Activities, Distressed Community Financing Activities, and Service Activities;

(nn) *Service Activities* means the following activities: Deposit Liabilities; Financial Services; Community Services; Targeted Financial Services; and Targeted Retail Savings/Investment Products;

(oo) *Small Business Loan* means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) and is located in a Distressed Community;

(pp) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation;

(qq) *Targeted Financial Services* means ETAs, IDAs, and such other similar banking products as maybe specified by the Fund in the applicable NOFA;

(rr) *Targeted Retail Savings/ Investment Products* means certificates of deposit, mutual funds, life insurance and other similar savings or investment vehicles targeted to Low- and Moderate-Income Eligible Residents, as may be specified by the Fund in the applicable NOFA; and

(ss) *Unit of General Local Government* means any city, county town, township, parish, village or other general-purpose political subdivision of a State or Commonwealth of the United States, or general-purpose subdivision thereof, and the District of Columbia.

§ 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1559–0005.

Subpart B—Awards

§ 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out Service Activities or Distressed Community Financing Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. The Applicant may designate different Distressed Communities for each category of activity. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is Integrally Involved in a Distressed Community as specified in the applicable NOFA.

(b) *Minimum area and eligibility requirements.* A Distressed Community must meet the following minimum area and eligibility requirements:

(1) Minimum area requirements. A Distressed Community:

(i) Must be an area that is located within the jurisdiction of one (1) Unit of General Local Government;

(ii) The boundaries the area must be contiguous; and

(iii) The area must:

(A) Have a population, as determined by the most recent census data available, of not less than 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater; or

(B) Have a population, as determined by the most recent census data available, of not less than 1,000 in any other case; or

(C) Be located entirely within an Indian Reservation.

(2) Eligibility requirements. A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Eligible Residents have incomes that are less than the national poverty level, as published by the U.S. Bureau of the Census in the most recent decennial census for which data is available;

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data, including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method; and

(iii) Such additional requirements as may be specified by the Fund in the applicable NOFA.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements set forth in paragraph (b) of this section; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section, provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* The Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be designated as a Distressed Community. Applicants shall submit designation materials as instructed in the applicable NOFA.

§ 1806.201 Measuring and reporting Qualified Activities.

(a) *General.* An Applicant may receive a Bank Enterprise Award for engaging in any of the following categories of Qualified Activities during an Assessment Period: CDFI Related Activities, Distressed Community Financing Activities, or Service Activities. The Fund may further qualify such Qualified Activities in the applicable NOFA, including such additional geographic and transaction size limitations as the Fund deems appropriate.

(b) *Reporting Qualified Activities.* An Applicant should report only its Qualified Activities for the category in which it is seeking a Bank Enterprise Award. For example, if an Applicant is seeking a Bank Enterprise Award for Distressed Community Financing Activities only, it should report only its activities for the Distressed Community Financing Activities category.

(1) If an Applicant elects to apply for an award in either the CDFI Related Activities category or the Distressed Community Financing Activities category, it must report on all types of activity within that category unless the Applicant can provide a reasonable explanation acceptable to the Fund, in its sole discretion, as to why it cannot report on all activities in such category.

(2) If an Applicant elects to apply for an award in the Service Activities category, it may elect not to report each type of activity within the Service Activities category.

(c) *Area served.* CDFI Related Activities must be provided to a CDFI Partner Integrally Involved in a Distressed Community. Service Activities and Distressed Community Financing Activities must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(1) Undertaken in the Distressed Community; or

(2) Provided to Low- and Moderate-Income Eligible Residents or enterprises Integrally Involved in the Distressed Community.

(d) *Certain Limitations on Qualified Activities*—Activities funded with the proceeds of Federal funding or tax credit programs may be ineligible for purposes of calculating or receiving a Bank Enterprise Awards. Please see the applicable BEA NOFA for current limitations on Qualified Activities.

(e) *Measuring the Value of Qualified Activities.* Subject to such additional or alternative valuations as the Fund may specify in the applicable NOFA, the Fund will assess the value of:

(1) Equity Investments, Equity-Like Loans, loans, grants and certificates of deposits, at the original amount of such Equity Investments, Equity-Like Loans, loans, grants or certificates of deposits. Where a certificate of deposit matures and is then rolled over during the Baseline Period or the Assessment Period, as applicable, the Fund will assess the value of the full amount of the rolled over deposit. Where an existing loan is refinanced (a new loan is originated to pay off an existing loan, whether or not there is a change in the applicable loan terms), the Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant;

(3) Deposit Liabilities at the dollar amount deposited as measured by comparing the net change in the amount of applicable funds on deposit at the Applicant during the Baseline Period with the net change in the amount of applicable funds on deposit at the Applicant during the Assessment Period, as described below:

(i) The Applicant shall calculate the net change in deposits during the Baseline Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Applicant shall calculate the net change in such deposits during the Assessment Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(4) Financial Services and Targeted Financial Services based on the predetermined amounts as may be set forth by the Fund in the applicable NOFA; and

(5) Financial Services (other than those for which the Fund has established a predetermined value), Community Services, and CDFI Support Activities consisting of technical assistance based on the administrative costs of providing such services.

(f) *Closed Transactions.* A transaction shall be considered to have been carried out during the Baseline Period or the Assessment Period if the documentation evidencing the transaction:

(1) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively; and

(2) Constitutes a legally binding agreement between the Applicant and a borrower or investee which specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the Fund); and

(3) An initial cash disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction (as determined by the Fund) unless it is normal business practice to make no initial disbursement at closing and the Applicant demonstrates that the borrower has access to the proceeds, subject to reasonable conditions as may be determined by the Fund.

(g) *Reporting Period.* An Applicant may only measure the amount of a Qualified Activity that it reasonably expects to disburse to an investee, borrower, or other recipient within one year of the end of the applicable Assessment Period, or such other period as may be set forth by the Fund in the applicable NOFA.

§ 1806.202 Estimated award amounts.

(a) *General.* An Applicant shall calculate and submit to the Fund an estimated award amount as part of the Bank Enterprise Award application.

(b) *Award Percentages.* The Fund will establish the award percentage for each category of Qualified Activities in the applicable NOFA. Applicable award percentages for activities undertaken by Applicants that are CDFIs will be equal to three times the award percentages for activities undertaken by Applicants that are not CDFIs.

(c) *Calculating the estimated award amount.* The estimated award amount for each category of Qualified Activities will be equal to the applicable award percentage of the increase in the weighted value of such Qualified Activities between the Baseline Period and Assessment Period. The weighted

value of the applicable Qualified Activities shall be calculated by:

(1) Subtracting the Baseline Period value of such Qualified Activity from the Assessment Period value of such Qualified Activity to yield a remainder; and

(2) Multiplying the remainder by the applicable Priority Factor (as set forth in the applicable NOFA).

(d) *Estimated Award Eligibility Review*. The Fund will determine the eligibility of each transaction for which an Applicant has applied for a Bank Enterprise Award. Based upon this review, the Fund will calculate the actual award amount for which such Applicant is eligible.

§ 1806.203 Selection Process, actual award amounts.

(a) *Sufficient Funds Available to Cover Estimated Awards*. All Bank Enterprise Awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient to cover all estimated award amounts for which Applicants are eligible, in the Fund's determination, and an Applicant meets all of the program requirements specified in this part, then such Applicant shall receive an actual award amount that is calculated by the Fund in the manner specified in § 1806.202.

(b) *Insufficient Funds Available to Cover Estimated Awards*. If the amount of funds available during a funding round is insufficient to cover all estimated award amounts for which Applicants are eligible, in the Fund's determination, then the Fund will select Awardees and determine actual award amounts based on the process described in this section.

(c) *Priority of Awards*. The Fund will rank Applicants in each category of Qualified Activity according to the priorities described in this paragraph (c). Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds.

(1) First priority. If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to Applicants that propose to engage in CDFI Related Activities, ranked in the order set forth in the applicable NOFA.

(2) Second priority. If the amount of funds available during a funding round is sufficient for all Applicants that propose to engage in CDFI Related Activities but insufficient for all remaining estimated award amounts, second priority will be given to Applicants that propose to engage in Distressed Community Financing Activities, ranked in the order set forth in the applicable NOFA.

(3) Third Priority. If the amount of funds available during a funding round is sufficient for all Applicants that propose to engage in CDFI Related Activities and Distressed Community Financing Activities, but insufficient for all remaining estimated award amounts, third priority will be given to Applicants that propose to engage in Service Activities, ranked in the order set forth in the applicable NOFA.

(d) *Calculating actual award amounts*. The Fund will determine actual award amounts based upon the availability of funds, increases in Qualified Activities from the Baseline to the Assessment Period, and an Applicant's priority ranking. If an Applicant receives an award for more than one priority category described in this section, the Fund will combine the award amounts into a single Bank Enterprise Award.

(e) *Unobligated or deobligated funds*. The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) To select Applicants not previously selected, using the calculation and selection process contained in this part;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(f) *Limitation*. The Fund, in its sole discretion, may deny or limit the amount of an award for any reason.

§ 1806.204 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability; Applications*. Applicants shall submit applications for Bank Enterprise Awards in accordance with this section and the applicable NOFA. After receipt of an application, the Fund may request clarifying or technical information related to materials submitted as part of such application or to verify that Qualified Activities were carried out in the manner prescribed in this part.

(b) *Application contents*. An application for a Bank Enterprise Award shall contain:

(1) A completed worksheet that reports the increases in Qualified Activities actually carried out during the Baseline and Assessment Period. If an Applicant has merged with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that reports the activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed;

(2) A report of Qualified Activities that were closed during the Assessment Period. Such report shall describe the original amount, census tract served, and the dates of execution, initial disbursement, and final disbursement of the instrument;

(3) With respect to all CDFI Related Activities and Distressed Community Financing Activities where the amount of the Qualified Activity is $250,000 or greater, documentation that meets the conditions described in § 1806.201(f);

(4) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(5) Certifications, as described in the applicable NOFA and Bank Enterprise Award application, that the information provided to the Fund is true and accurate and that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(6) In the case of an Applicant proposing to engage in Service Activities, or Distressed Community Financing Activities, an Applicant must submit a Distressed Community map and other documentation as described in the applicable NOFA and Bank Enterprise Award application;

(7) Information that indicates that each CDFI to which an Applicant has provided CDFI Support Activities is Integrally Involved in a Distressed Community as described in the applicable NOFA and Bank Enterprise Award application; and

(8) Any other information requested by the Fund, or specified by the Fund in the applicable NOFA or the Bank Enterprise Award application, in order to document or otherwise assess the validity of information provided by the Applicant to the Fund.

Subpart C—Terms and Conditions of Assistance

§ 1806.300 Award Agreement; sanctions.

(a) *General*. After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee shall:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Comply with such other terms and conditions (including record keeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(4) Comply with performance goals that have been established by the Fund. Such performance goals will include measures that require an Awardee to use its BEA Program Award funds for Qualified Activities.

(b) *Sanctions*. In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the award, bar the Awardee and/or its Affiliates from applying for an award from the Fund for a period to be decided by the Fund in its sole discretion, and pursue any other available legal remedies.

(c) *Compliance with Other CDFI Fund Awards*. In the event that an Awardee or its Subsidiary or Affiliate is not in compliance, as determined by the Fund, with the terms and conditions of any other award under the Bank Enterprise Award Program or any component of the Community Development Financial Institutions Program, the Fund may, in its sole discretion, reject an application for or withhold disbursement (either initial or subsequent) on a Bank Enterprise Award.

(d) *Notice*. Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund will provide the Awardee with written notice of the proposed sanction and an opportunity to respond. Nothing in this section, however, will provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.302 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

§ 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

§ 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

Dated: January 15, 2009.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

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