3–10–08 Monday
Vol. 73 No. 47 Mar. 10, 2008

Pages 12627–12868

Federal Register

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AI08

Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to provide for expedited (and, in this case, ''interlocutory'') review by the Commission of orders on requests by potential parties for access to certain sensitive unclassified non-safeguards information (SUNSI) and Safeguards Information (SGI).

DATES: The effective date is April 9, 2008.

ADDRESSES: Publicly available documents created or received at the NRC after November 1, 1999, are available electronically on the NRC's Web site in the Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail at *pdr@nrc.gov*. Publicly available documents related to this rulemaking, including comments, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

FOR FURTHER INFORMATION CONTACT: Tison Campbell, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8579, e-mail *tison.campbell@nrc.gov*.

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I. Background

Commission regulations in 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders'' govern the conduct of NRC adjudicatory proceedings. Potential parties who may request a hearing or petition to intervene in a hearing under 10 CFR part 2 may deem it necessary to obtain access to sensitive unclassified non-safeguards information (SUNSI) (including, but not limited to, proprietary, confidential commercial, and security-related information) and to Safeguards Information (SGI) as defined in 10 CFR 73.2 to meet Commission requirements for hearing requests or for intervention.

In order to facilitate access to the information described above, the Commission has developed, and made available for public comment,[1] draft access procedures to address receipt of this information by potential parties. In addition, the Commission is completing a final rule to update its regulations governing access to and protection of SGI.[2] Development of the procedures for access by potential parties and of the SGI rule is separate from, and not a part of, this amendment to 10 CFR 2.311. The revisions to 10 CFR 2.311 provide for interlocutory review by the Commission of access determinations made under those procedures, but § 2.311 does not control how the initial access determinations are made. However, a brief discussion of the purpose of those procedures is necessary to explain the Commission's intent in revising § 2.311.

Under the draft procedures for information access, a **Federal Register** notice of hearing, or a notice of opportunity for hearing on a licensing or other regulatory action, would instruct persons who claim a need for access to SUNSI or SGI in order to prepare a hearing request or intervention petition to submit a request by letter to specified Commission offices, within a specified time period from the issuance of the notice. The letter request for either SUNSI or SGI would have to contain certain elements, such as a description of the NRC licensing or enforcement action at issue (with citations to the relevant FRN); a description of the potential party's particular interest that could be harmed by the potential NRC action; and the identity of the individual requesting access to the information and that individual's need for the information in order to meaningfully participate in the adjudicatory proceeding. Access to SGI under the draft access procedures also would require: (1) A showing of the technical competence of the requester to understand and use the requested information to provide the basis and specificity for a proffered contention and (2) completion of a background check (including fingerprinting as part of a criminal history records check, as well as a credit check release) to establish trustworthiness and reliability. Because these background checks may take up to several months to complete, the draft access procedures include a ''pre-clearance'' process by which potential parties who may seek access to SGI could request initiation of the background check prior to a notice of hearing and thereby minimize delays in

[1] *See* ''Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information; Reopening of Public Comment Period and Notice of Availability of Proposed Procedures for Comment'' (72 FR 43569; August 6, 2007). The draft access procedures document, ''Availability for Comment of Proposed Procedures to Allow Potential Intervenors to Gain Access to Relevant Records That Contain Sensitive Unclassified Non-Safeguards Information or Safeguards Information,'' is available in ADAMS at ML071910149.

[2] *See*, ''Protection of Safeguards Information,'' (71 FR 64004; Oct. 31, 2006). The comment period on that proposed rule expired January 2, 2007, and a final rule is under development.

the preparation (and, if appropriate, adjudication) of security-related contentions.

Based on an evaluation of the information submitted, the NRC staff would determine whether (1) there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in an adjudicatory proceeding and (2) the proposed recipient of the information has demonstrated a need for access to SUNSI, a need for access to SGI, a ''need to know,'' and that the proposed recipient is trustworthy and reliable. If the request for access to SUNSI or SGI is granted, the terms and conditions for this access would be set forth in a draft protective order and affidavit of non-disclosure. If the request for access to SUNSI or SGI is denied by the NRC staff, the NRC staff would briefly state the reasons for the denial. The requester could challenge the NRC staff's adverse determination or denial of access; similarly, a party other than the requester could challenge a grant of access to SUNSI if that party's interest independent of the proceeding would be harmed by the release of the information. Depending on the applicable access procedures and provisions of the SGI rule (after they become effective), such a challenge would be filed with any presiding officer assigned to the proposed NRC licensing action; or if no presiding officer has yet been assigned, with the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel; or if he or she is unavailable, with another administrative judge, or with an administrative law judge with jurisdiction under 10 CFR 2.318(a); or, if another officer has been designated to rule on information access issues, with that officer.

As explained above, requests for this information at this stage of a proceeding would initially be made to and decided by the NRC staff. However, the draft access procedures would not apply to license transfer adjudications (for which the Commission has already chosen a different procedural approach),[3] the pending High Level Waste (HLW) Pre-License Application Presiding Officer proceeding (PAPO), or any subsequent adjudication regarding the Department of Energy's (DOE) expected application for a construction authorization for a HLW repository.

The draft access procedures also include time periods for submission of requests for access, for NRC staff determinations, for filing of contentions, and for challenges to appeal NRC staff access determinations. These periods are intended to minimize the potential for delay in the admission of contentions.[4]

This final rulemaking deals with interlocutory review (review permitted immediately rather than at the end of a proceeding) by the Commission of certain orders granting or denying access to SUNSI or SGI. The amendments to 10 CFR 2.311 recognize the potential role of access to information on the proposed licensing action by potential parties in determining whether to request a hearing or to intervene in a hearing or to support these requests. Extending the opportunity to seek interlocutory review by the Commission of orders relating to these requests should enhance both public involvement in NRC adjudicatory proceedings and the effectiveness and efficiency of these proceedings.

II. Discussion

Section 2.311 provides for ''interlocutory'' review by the Commission of orders issued by a presiding officer or Atomic Safety and Licensing Board[5] on requests for hearing or petitions to intervene and selection of hearing procedures. However, there is no comparable provision for interlocutory Commission review of orders relating to requests by potential parties for access to information described previously. To address this omission, the Commission is changing the rules of practice in 10 CFR Part 2 as described below.

The definitions in § 2.4 are modified to add a definition of *Potential party* as follows: *Potential party* means any person who has requested, or who may intend to request, a hearing or petition to intervene in a hearing under 10 CFR Part 2, other than hearings conducted under Subparts J and M of 10 CFR Part 2.

This definition does not rely on the definition of *Party* in § 2.1001 of Subpart J, applicable to a party in a proceeding for the issuance of licenses related to a high-level radioactive waste (HLW) geologic repository. As stated in § 2.1001, the term Party is defined only for purposes of Subpart J of 10 CFR Part 2.[6] Similarly, the definition by its terms does not apply to a proceeding conducted under Subpart M (''Procedures for Hearings on License Transfer Applications'').

The revised § 2.311 allows potential parties (persons who may intend to request a hearing or petition for leave to intervene in a hearing) as well as the NRC staff, applicants, or licensees, to seek expedited review by the Commission of certain orders. Among these are orders relating to a request by potential parties for access to SUNSI and SGI. This amendment is necessary to provide an avenue for promptly obtaining Commission review of these determinations, some of which might ultimately result in denial of a request for a hearing or for leave to intervene for failure to meet the requirements for standing and admissibility of contentions. Specific changes to § 2.311 are discussed below.

The rule amends 10 CFR 2.311(a) by making the following changes. In addition to deletion of the reference in paragraph (a) to the Atomic Safety and Licensing Board, paragraph (a) is further modified. First, language is added to include orders other than those issued by the presiding officer: e.g., if a presiding officer has not been designated, orders of the Chief Administrative Judge, or if he or she is unavailable, of another administrative judge, or of an administrative law judge with jurisdiction under § 2.318(a). This change recognizes that a presiding officer might not have been designated when a potential party is seeking interlocutory review by the Commission. Also, paragraph (a) is divided into paragraphs (a)(1), (a)(2), and (a)(3), and a new paragraph (b) is added. Paragraphs (a)(1) and (a)(2) retain orders on a request for hearing or petition to intervene as orders on which interlocutory review by the Commission may be sought. New paragraph (a)(3) adds to these categories an order relating to a request for access to SUNSI (including, but not limited to, proprietary, confidential commercial,

[3] *See Consolidated Edison Co.* (Indian Point, Units 1 and 2), CLI–01–8, 53 NRC 225, 231 (2001); *Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI–00–22, 52 NRC 266, 292 (2000). In these decisions, the Commission established a procecdure for making confidential commercial information available to petitioners to intervene in which the applicant and petitioners may negotiate a confidentiality agreement or a proposed protective order. If no agreement can be reached, one or more individuals may move for issuance of a protective order.

[4] The final access procedures, a final rule delegating authority to issue Orders under the procedures to the Secretary of the Commission, and the NRC staff's response to public comments on the draft procedures were recently made available to the public in ADAMS (ML080380626, ML080380608, and ML080380633).

[5] The term ''Atomic Safety and Licensing Board'' will be deleted because the definition of ''presiding officer'' in 10 CFR 2.4 includes that term.

[6] See the discussion in Section I of this document regarding the inapplicability of the interlocutory appeal process that is the subject of this final rule to the pending HLW PAPO proceeding or to any subsequent adjudication regarding the expected application by DOE for a construction authorization for a HLW repository.

and security-related information) and SGI. Access to this information could be deemed necessary by a potential party to determine whether to request a hearing or petition to intervene or to support such requests. This paragraph also adds language authorizing an appeal, in connection with such a request, of an order of an officer designated to rule on information access issues. This language is necessary because, as is contemplated by the access procedures discussed in Section I of this preamble and by the Commission's final rule in development concerning SGI, a judge may be specifically designated to adjudicate information access issues. The remainder of paragraph (a), addressing requirements relating to such matters as the initiation and filing of appeals, is redesignated as paragraph (b).

In light of the above modifications, current paragraphs (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e), respectively. In redesignated paragraph (c), an order denying a request for access to the information described in paragraph (a), is included as an order appealable by the petitioner/requester on the question as to whether the request and/or petition should have been granted. Former paragraph (c), redesignated as paragraph (d), concerns appeals by a party other than the requester/petitioner. This paragraph is modified to address in paragraph (d)(1) appeals of orders granting a petition to intervene and/or hearing and in paragraph (d)(2), appeals of orders granting requests for access to information. The appealable issue in paragraph (d)(2) is whether the request for access should have been denied in whole or in part. Paragraph (d) in the current rule is redesignated as paragraph (e) but is otherwise unchanged.

III. Analysis of Public Comments on the Proposed Rule

The Commission received two comment letters on the proposed rule (72 FR 32018; June 11, 2007) one from the Nuclear Energy Institute (NEI) and the other from Progress Energy. NEI supported the rule as proposed. Progress Energy suggested revisions to the Background section of the rule's Supplementary Information to make clear that a licensee or applicant may challenge an NRC staff grant of access to SUNSI or SGI. Progress Energy stated that the proposed rule provides for these appeals as a counterpart to the provision allowing access-requesters to challenge denials of these requests. Progress Energy stated that this approach is consistent with existing practices for the treatment of proprietary information in NRC adjudications. Progress Energy identified several specific places in the Background section where references should be added to clarify the appeal rights of applicants or licensees.

In addition, the Commission received two comment letters on the related draft access procedures; one of these comments indirectly addressed the proposed rule. The commenter, a law firm that represents utilities, stated that an applicant or licensee should have an opportunity to have input concerning the propriety of providing SUNSI or SGI to the requesting party. The commenter referenced the proposed interlocutory review rule in stating that applicants and licensees (as well as the NRC staff) should have an opportunity to participate in challenges to access determinations.

NRC Response

The proposed rule provided that a party other than the access-requester may argue on appeal that the access request ''should have been denied in whole or in part.'' See, § 2.311(d)(2). The issue raised by the comments has prompted the Commission to reconsider the permissible scope of interlocutory appeals by parties other than those requesting access to SUNSI or SGI.

The Commission agrees with the commenter's general point concerning the parallel appeal provisions for applicants/licensees with respect to disputes over proprietary information. In such circumstances, the applicant/licensee could be uniquely affected by improper disclosure and should have an opportunity to contest that access determination. However, because of the NRC staff obligation and strong interest in protecting SGI and because of the diverse types of information that may be designated as SUNSI, the Commission concludes that efficient resolution of information access issues would not be furthered by expediting appeals of favorable access determinations with respect to SGI or with respect to SUNSI in which the appealing party has no direct independent interest.

A key purpose of the amended provision is to permit prompt Commission review of access determinations concerning information that potential parties may deem necessary to meet Commission hearing requirements. For SGI and for most types of SUNSI, the NRC staff's role and expertise in making access determinations (and appealing contrary presiding officer orders to the Commission, if necessary) will serve to protect the information from unnecessary disclosure. Accordingly, the NRC staff's opportunity to appeal favorable determinations generally does not need to be duplicated by appeals from other parties. However, the potential value of interlocutory appeals by parties other than the requester may justify the additional adjudication time and resources in circumstances when improper disclosure could harm those parties' independent interests. Therefore, under the final rule, interlocutory review of favorable information access rulings with respect to SGI may be sought only by the NRC staff or, with respect to SUNSI, by the NRC staff or by a party with a directly affected independent interest. As explained below, the Commission has limited and clarified the rule text and Supplementary Information in this document accordingly.

A potential party requesting access to SUNSI must demonstrate a ''need'' for the requested information, while a potential party requesting access to SGI must demonstrate both a ''need to know'' the requested SGI and that the recipient of the information is ''trustworthy and reliable.'' The SGI trustworthiness and reliability determination is based on a background check (including fingerprinting as part of a criminal history records check). In NRC adjudications, making the initial need to know and trustworthiness and reliability determinations will generally be the responsibility of the NRC staff.

Upon further consideration, the Commission concludes that the rule should not permit challenges by parties other than the NRC staff to grants of access to SGI held by the NRC staff.[7] First, with respect to an SGI requester's trustworthiness and reliability, the NRC staff and the SGI requester are the only potential parties who will have access to the results of the background check (including the criminal history records check) on which the trustworthiness and reliability determination is based. Therefore, it is unlikely that another potential party would have a relevant factual basis for challenging the soundness of the determination. Moreover, enabling such challenges could encourage frivolous ''untrustworthiness/unreliability'' claims solely intended to undermine an opposing party's credibility or delay the proceedings. Furthermore, given the NRC staff's robust obligation to ensure that dissemination of SGI is appropriately limited to trustworthy and reliable individuals and to those with a need to know, litigating these objections

[7] Similarly, the final access procedures do not address information possessed solely by a licensee or applicant.

by other potential parties would be more likely to distract from resolution of the issues than to enhance protection of SGI. Accordingly, the final rule does not extend to appeals by non-requesters of favorable SGI access determinations. However, because of the NRC staff's responsibility for protecting SGI in NRC proceedings, appeals by the NRC staff will remain within the scope of the rule.

Similarly, with respect to SUNSI, the rule should not permit challenges to a favorable determination of ''need'' for information in which the challenging party has no direct interest independent of the adjudicatory proceeding. For most SUNSI, the NRC staff's regulatory responsibility for releasing the information only to those demonstrating need should provide sufficient assurance that favorable access determinations are sound. Accordingly, expending time and resources to hear third-party challenges (and subsequently permit expedited Commission review) concerning that information would not be justified. However, as indicated by the commenter, improper release of certain categories of SUNSI—namely proprietary information, privacy information, certain security-related information, or information controlled by other Government agencies—could have a direct impact on independent interests of other parties to the proceeding. For these types of information, it remains appropriate for such an affected party to be able to challenge a presiding officer determination that access be granted.

For the above reasons, the Commission has modified proposed § 2.311(d)(2) to state that review is permitted on the question of ''Whether the request for access to the information described in paragraph (a)(3) of this section should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a party whose interest independent of the proceeding would be harmed by the release of the information.'' The Commission has also made a minor grammatical correction to the first sentence of § 2.311(d)—inserting the word ''granting'' before ''a request for information'' so that it is clearer that appeals under this section relate only to orders granting access to information. Finally, to emphasize that § 2.311(d)(2), not (d)(1), is the paragraph governing appeals of orders granting requests for access to SUNSI and SGI, the Commission has revised the text of § 2.311(d)(1) to refer to a ''request for hearing or petition to intervene'' rather than just a ''request/petition.''

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is permitting potential parties to seek interlocutory Commission review of orders denying a request for access to information for the preparation of contentions. This action does not constitute the establishment of a government-unique standard as defined in the Office of Management and Budget (OMB) Circular A–119 (1998).

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

VI. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VII. Regulatory Analysis

A regulatory analysis has not been prepared for this regulation because it applies to the procedures to be used in NRC adjudicatory proceedings and does not involve any provisions that would impose any economic burdens on licensees or the public.

VIII. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule only governs procedural aspects to provide for expedited review by the Commission of orders on requests by potential parties for access to certain sensitive unclassified non-safeguards information (SUNSI) and Safeguards Information (SGI).

IX. Backfit Analysis

The NRC has determined that the backfit rules (§§ 50.109, 70.76, 72.62, or 76.76) do not apply to this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

X. Congressional Review Act

Under the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Energy Policy Act of 2005, and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND FOR ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Public Law 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Public Law 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Public Law 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Public Law 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also

issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Public Law 101–410, 104 Stat. 90, as amended by section 3100(s), Public Law 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Public Law 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554.

Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Public Law 97—425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Public Law 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Public Law 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Public Law 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.4, a definition of *Potential party* is added in alphabetical order to read as follows:

§ 2.4 Definitions.

* * * * *

Potential party means any person who has requested, or who may intend to request, a hearing or petition to intervene in a hearing under 10 CFR part 2, other than hearings conducted under Subparts J and M of 10 CFR part 2.

* * * * *

■ 3. Section 2.311 is revised to read as follows:

§ 2.311 Interlocutory review of rulings on requests for hearings/petitions to intervene, selection of hearing procedures, and requests by potential parties for access to sensitive unclassified non-safeguards information and safeguards information.

(a) An order of the presiding officer, or if a presiding officer has not been designated, of the Chief Administrative Judge, or if he or she is unavailable, of another administrative judge, or of an administrative law judge with jurisdiction under § 2.318(a), may be appealed to the Commission with respect to:

(1) A request for hearing;

(2) A petition to intervene; or

(3) A request for access to sensitive unclassified non-safeguards information (SUNSI), including, but not limited to, proprietary, confidential commercial, and security-related information, and Safeguards Information (SGI). An appeal to the Commission may also be taken from an order of an officer designated to rule on information access issues.

(b) These appeals must be made as specified by the provisions of this section, within ten (10) days after the service of the order. The appeal must be initiated by the filing of a notice of appeal and accompanying supporting brief. Any party who opposes the appeal may file a brief in opposition to the appeal within ten (10) days after service of the appeal. The supporting brief and any answer must conform to the requirements of § 2.341(c)(2). No other appeals from rulings on requests for hearings are allowed.

(c) An order denying a petition to intervene, and/or request for hearing, or a request for access to the information described in paragraph (a) of this section, is appealable by the requestor/petitioner on the question as to whether the request and/or petition should have been granted.

(d) An order granting a petition to intervene, and/or request for hearing, or granting a request for access to the information described in paragraph (a) of this section, is appealable by a party other than the requestor/petitioner on the question as to:

(1) Whether the request for hearing or petition to intervene should have been wholly denied; or

(2) Whether the request for access to the information described in paragraph (a)(3) of this section should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a party whose interest independent of the proceeding would be harmed by the release of the information.

(e) An order selecting a hearing procedure may be appealed by any party on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in § 2.310. The appeal must be filed with the Commission no later than ten (10) days after issuance of the order selecting a hearing procedure.

Dated at Rockville, Maryland, this 4th day of March 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–4768 Filed 3–7–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30595; Amdt. No. 3258]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 10, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations listed in the regulations is approved by the Director of the **Federal Register** as of March 10, 2008.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_or_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available

online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the SIAPs, the associated Takeoff Minimums, and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on February 22, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 13 MAR 2008

Bishop CA, Eastern Sierra Rgnl, RNAV (GPS) Y RWY 12, Orig
Bishop CA, Eastern Sierra Rgnl, RNAV (GPS) Z RWY 12, Orig

Effective 10 APR 2008

Anniston, AL, Anniston Metropolitan, ILS OR LOC RWY 5, Amdt 2
Anniston, AL, Anniston Metropolitan, RNAV (GPS) RWY 5, Orig
Anniston, AL, Anniston Metropolitan, RNAV (GPS) RWY 23, Orig
Anniston, AL, Anniston Metropolitan, NDB RWY 5, Amdt 3
Anniston, AL, Anniston Metropolitan, Takeoff Minimums and Obstacle DP, Amdt 6
Dothan, AL, Dothan Regional, ILS OR LOC RWY 14, Orig
Mobile, AL, Mobile Regional, Takeoff Minimums and Obstacle DP, Amdt 1
Palmer, AK, Palmer Muni, RNAV (GPS)–A, Orig
Palmer, AK, Palmer Muni, RNAV (GPS) RWY 9, Orig
Palmer, AK, Palmer Muni, GPS–A, Orig CANCELLED
Palmer, AK, Palmer Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Venetie, AK, Venetie, RNAV (GPS) RWY 4, ORIG
Venetie, AK, Venetie, RNAV (GPS) RWY 22, ORIG
Venetie, AK, Venetie, Takeoff Minimums and Obstacle DP, Orig
Yakutat, AK, Yakutat, RNAV (GPS) RWY 11, Amdt 1A
Yukutat, AK, Yakutat, RNAV (GPS) RWY 29, Amdt 2
Yukutat, AK, Yukutat, LOC/DME BC RWY 29, Amdt 5

Sedona, AZ, Sedona, Takeoff Minimums and Obstacle DP, Amdt 1
Alturas, CA, Alturas Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Fresno, CA, Fresno Yosemite Intl, ILS OR LOC/DME RWY 29R, ILS RWY 29R (CAT II), ILS RWY 29R (CAT III), Amdt 37
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 7L, Amdt 6B
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 7R, Amdt 5A
Palm Springs, CA, Palm Springs Intl, Takeoff Minimums and Obstacle DP, Amdt 5
Sacramento, CA, McClellan Airfield, Takeoff Minimums and Obstacle DP, Amdt 1
Santa Barbara, CA, Santa Barbara Muni, ILS OR LOC RWY 7, Amdt 5
Santa Barbara, CA, Santa Barbara Muni, RNAV (GPS) RWY 7, Orig
Cairo, GA, Cairo-Grady County, RNAV (GPS) RWY 13, Orig
Cairo, GA, Cairo-Grady County, RNAV (GPS) RWY 31, Orig
Cairo, GA, Cairo-Grady County, NDB RWY 13, Amdt 4
Cairo, GA, Cairo-Grady County, Takeoff Minimums and Obstacle DP, Amdt 2
Monroe, GA, Monroe-Walton County, Takeoff Minimums and Obstacle DP, Amdt 1
Council Bluffs, IA, Council Bluffs Muni, RNAV (GPS) RWY 18, Orig
Council Bluffs, IA, Council Bluffs Muni, RNAV (GPS) RWY 36, Orig
Council Bluffs, IA, Council Bluffs Muni, VOR–A, Amdt 5
Council Bluffs, IA, Council Bluffs Muni, Takeoff Minimums and Obstacle DP, Orig
Rantoul, IL, Rantoul Natl Avn Cntr/Frank Elliott Fld, RNAV (GPS) RWY 9, Amdt 1
Rantoul, IL, Rantoul Natl Avn Cntr/Frank Elliott Fld, RNAV (GPS) RWY 27, Amdt 1
Rantoul, IL, Rantoul Natl Avn Cntr/Frank Elliott Fld, Takeoff Minimums and Obstacle DP, Orig
Auburn, IN, Dekalb County, ILS OR LOC RWY 27, Amdt 1
French Lick, IN, French Lick Muni, RNAV (GPS) RWY 8, Orig
French Lick, IN, French Lick Muni, GPS RWY 8, Orig, CANCELLED
French Lick, IN, French Lick Muni, Takeoff Minimums and Obstacle DP, Orig
Lexington, KY, Blue Grass, VOR–A, Amdt 9A
New Orleans, LA, Lakefront, ILS OR LOC RWY 18R, Orig
New Orleans, LA, Lakefront, RNAV (GPS) RWY 18R, Amdt 1
New Orleans, LA, Lakefront, VOR RWY 18R, Amdt 4A, CANCELLED
Bangor, ME, Bangor Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Ludington, MI, Mason County, RNAV (GPS) RWY 8, Orig
Ludington, MI, Mason County, RNAV (GPS) RWY 26, Orig
Ludington, MI, Mason County, GPS RWY 26, Orig–A, CANCELLED
Romeo, MI, Romeo State, Takeoff Minimums and Obstacle DP, Amdt 4
International Falls, MN, Falls, Intl, ILS OR LOC/DME RWY 13, Amdt 1
International Falls, MN, Falls Intl, RNAV (GPS) RWY 13, Orig
International Falls, MN, Falls Intl, RNAV (GPS) RWY 31, Orig
International Falls, MN, Falls Intl, NDB RWY 31, Amdt 9
International Falls, MN, Falls Intl, VOR RWY 13, Amdt 14
International Falls, MN, Falls Intl, Takeoff Minimums and Obstacle DP, Amdt 3
Minneapolis, MN, Mineapolis-St Paul Int/Wold-Chamberlain, ILS OR LOC RWY 30R, Amdt 12
Minneapolis, MN, Mineapolis-St Paul Int/Wold-Chamberlain, COPTER ILS OR LOC RWY 30R, Amdt 1, CANCELLED
Warroad, MN, Warroad Intl Memorial, RNAV (GPS) RWY 13, Orig
Warroad, MN, Warroad Intl Memorial, RNAV (GPS) RWY 31, Orig
Warroad, MN, Warroad Intl Memorial, NDB RWY 13, Amdt 2
Warroad, MN, Warroad Intl Memorial, Takeoff Minimums and Obstacle DP, Orig
Columbia, MS, Columbia-Marion County, RNAV (GPS) RWY 23, Orig
Columbia, MS, Columbia-Marion County, VOR/DME OR GPS RWY 23, Amdt 4A, CANCELLED
Fulton, MO, Elton Hensley Memorial, RNAV (GPS) RWY 5, Orig
Fulton, MO, Elton Hensley Memorial, RNAV (GPS) RWY 23, Orig
Fulton, MO, Elton Hensley Memorial, VOR/DME RNAV OR GPS RWY 5, Amdt 1, CANCELLED
Fulton, MO, Elton Hensley Memorial, Takeoff Minimums and Obstacle DP, Orig
Lamar, MO, Lamar Muni, RNAV (GPS) RWY 3, Orig
Lamar, MO, Lamar Muni, NDB RWY 3, Amdt 1
Lamar, MO, Lamar Muni, Takeoff Minimums and Obstacle DP, Orig
Ozark, MO, Air Park South, VOR OR GPS RWY 17, Amdt 4B, CANCELLED
Charlotte, NC, Charlotte/Douglas Intl, Takeoff Minimums and Obstacle DP, Amdt 3
Concord, NC, Concord Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Gastonia, NC, Gastonia Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Fremont, NE, Fremont Muni, VOR RWY 14, Amdt 2
Fremont, NE, Fremont Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Las Cruces, NM, Las Cruces Intl, ILS OR LOC RWY 30, Amdt 2A
Cambridge, OH, Cambridge Muni, LOC/DME RWY 22, Amdt 1
Lancaster, OH, Fairfield County, RNAV (GPS) RWY 10, Orig
Lancaster, OH, Fairfield County, RNAV (GPS) RWY 28, Orig
Lancaster, OH, Fairfield County, VOR/DME RNAV OR GPS RWY 10, Amdt 10A, CANCELLED
Lancaster, OH, Fairfield County, NDB OR GPS RWY 28, Amdt 8A, CANCELLED
Marion, OH, Marion Muni, RNAV (GPS) RWY 13, Orig
Marion, OH, Marion Muni, NDB OR GPS RWY 13, Amdt 4B, CANCELLED
Wadsworth, OH, Wadsworth Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Youngstown/Warren, OH, Youngstown-Warren Rgnl, ILS OR LOC RWY 14, Amdt 7
Youngstown/Warren, OH, Youngstown-Warren Rgnl, ILS OR LOC RWY 32, Amdt 26
Youngstown/Warren, OH, Youngstown-Warren Rgnl, NDB RWY 32, Amdt 19
Youngstown/Warren, OH, Youngstown-Warren Rgnl, RNAV (GPS) RWY 14, Orig
Youngstown/Warren, OH, Youngstown-Warren Rgnl, RNAV (GPS) RWY 32, Orig
El Reno, OK, El Reno Regional, GPS RWY 35, Orig, CANCELLED
Dubois, PA, Dubois Rgnl, RNAV (GPS) RWY 7, Orig-A
Dubois, PA, Dubois Rgnl, VOR/DME RWY 7, Amdt 3A
Dubois, PA, Dubois Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Newport, RI, Newport State, RNAV (GPS) RWY 16, Orig
Newport, RI, Newport State, VOR/DME RWY 16, Amdt 1
Rock Hill, SC, Rock Hill/York Co/Bryant Field, Takeoff Minimums and Obstacle DP, Orig
Memphis, TN, Memphis Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Union City, TN, Everett-Stewart Regional, Takeoff Minimums and Obstacle DP, Orig
Austin, TX, Lakeway Airpark, Takeoff Minimums and Obstacle DP, Amdt 1
Graham, TX, Graham Muni, RNAV (GPS) RWY 3, Orig
Graham, TX, Graham Muni, RNAV (GPS) RWY 21, Orig
Graham, TX, Graham Muni, NDB OR GPS RWY 21, Amdt 2, CANCELLED
Rutland, VT, Rutland State, LOC Y RWY 19, Amdt 2
Rutland, VT, Rutland State, LOC Z RWY 19, Orig

Burlington, WI, Burlington Muni, RNAV (GPS) RWY 29, Orig

Burlington, WI, Burlington Muni, VOR RWY 29, Amdt 8

The FAA published an Amendment in Docket No. 30591, Amdt No. 3254 to Part 97 of the Federal Aviation Regulations (Vol 73, FR No. 27, Page 7462 dated Friday, February 08, 2008) under section 97.33, effective March 13, 2008 which is hereby rescinded:

Las Cruces, NM, Las Cruces Intl, ILS OR LOC RWY 30, Amdt 2A

[FR Doc. 08–933 Filed 3–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 4

[CBP Dec. 08–02]

Addition of Lithuania to the List of Nations Entitled to Special Tonnage Tax Exemption

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Pursuant to information provided by the Department of State, Customs and Border Protection has found that no discriminating or countervailing duties are imposed by the government of Lithuania on vessels owned by citizens of the United States. Accordingly, vessels of Lithuania are exempt from special tonnage taxes and light money in ports of the United States. This document amends title 19 of the Code of Federal Regulations by adding Lithuania to the list of nations whose vessels are exempt from payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

DATES: This amendment is effective March 10, 2008. The exemption from special tonnage taxes and light money for vessels registered in Lithuania became applicable on February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Regulations and Rulings, Office of International Trade, (202) 572–8724.

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, called ''light money,'' on all foreign vessels which enter U.S. ports (46 U.S.C. 60301–60303). However, vessels of a foreign country may be exempted from the payment of special tonnage taxes and light money upon presentation of satisfactory proof that the government of that foreign country does not impose discriminatory or countervailing duties to the disadvantage of the United States (46 U.S.C. 60304).

Section 4.22, Customs and Border Protection (CBP) regulations (19 CFR 4.22), lists those countries whose vessels have been found to be exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. The authority to amend this section of the CBP regulations has been delegated to the Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade.

By letter dated April 13, 2007, the Department of State informed CBP that the government of Lithuania does not impose discriminating or countervailing duties on vessels owned by citizens of the United States. Accordingly, the Department of State recommended that Lithuania be added to the list of countries whose vessels are exempt from special tonnage taxes and light money in ports of the United States, effective February 13, 2002.

Finding

On the basis of the above-mentioned information from the Department of State regarding the absence of discriminating or countervailing duties imposed by the government of Lithuania on vessels owned by citizens of the United States, CBP has determined that vessels of Lithuania are exempt from the payment of special tonnage tax and light money, effective February 13, 2002. The CBP regulations are amended accordingly.

Inapplicability of Notice and Delayed Effective Date

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, CBP has determined that notice and public procedure are unnecessary pursuant to section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)). Further, for the same reasons, good cause exists for dispensing with a delayed effective date under section 553(d)(3) of the APA (5 U.S.C. 553(d)(3)).

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).

List of Subjects in 19 CFR Part 4

Cargo vessels, Customs duties and inspection, Maritime carriers, Vessels.

Amendment to the CBP Regulations

■ For the reasons set forth above, part 4 of title of the Code of Federal Regulations (19 CFR part 4) is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 and the specific authority for § 4.22 are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Section 4.22 also issued under 46 U.S.C. 60301, 60302, 60303, 60304, 60305, 60306, 60312, 60503;

* * * * *

§ 4.22 [Amended]

■ 2. Section 4.22 is amended by adding ''Lithuania'' in appropriate alphabetical order.

Dated: March 5, 2008.

Craig A. Walker

Acting Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade.

[FR Doc. E8–4641 Filed 3–7–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Change of Sponsor; Ferric Oxide Injection; Gleptoferron Injection; Iron Dextran Complex Injection; Iron Hydrogenated Dextran Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two new animal drug applications (NADAs) for injectable iron supplements used in baby pigs from Boehringer Ingelheim Vetmedica, Inc., to Animal Health Pharmaceuticals, LLC. In addition, FDA is taking this opportunity to consolidate injectable iron supplements in a single section of the Code of Federal Regulations (CFR). This is being done to simplify and clarify the regulations.

DATES: This rule is effective March 10, 2008.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8307, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506–2002, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 106–772 for Iron-GARD Injection 100 milligrams/milliliter (mg/mL) and NADA 134–708 for Iron-GARD Injection 200 mg/mL to Animal Health Pharmaceuticals, LLC, 1805 Oak Ridge Circle, suite 101, St. Joseph, MO 64506. Accordingly, the regulations are amended in 21 CFR 522.1182 to reflect these changes of sponsorship.

In addition, FDA is taking this opportunity to consolidate such injectable iron supplements in a single section of the CFR. This is being done to simplify and clarify the regulations.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.940 [Removed]

■ 2. Remove § 522.940.

§ 522.1055 [Removed]

■ 3. Remove § 522.1055.

■ 4. Revise § 522.1182 to read as follows:

§ 522.1182 Iron injection.

(a) *Specifications.* See § 510.440 of this chapter. Each milliliter (mL) of solution contains the equivalent of:

(1) 100 milligrams (mg) of elemental iron derived from:

(i) Ferric hydroxide;

(ii) Ferric oxide; or

(iii) Elemental iron.

(2) 200 mg of elemental iron derived from ferric hydroxide.

(b) *Sponsors and conditions of use.* It is used in baby pigs by sponsors in § 510.600(c) of this chapter as follows:

(1) Nos. 059130 and 068718 for use of product described in paragraph (a)(1)(i) of this section as follows:

(i) For prevention of iron deficiency anemia, inject 100 mg (1 mL) by intramuscular injection at 2 to 4 days of age.

(ii) For treatment of iron deficiency anemia, inject 100 mg (1 mL) by intramuscular injection. Dosage may be repeated in approximately 10 days.

(2) No. 000856 for use of product described in paragraph (a)(1)(i) of this section as follows:

(i) For the prevention of anemia due to iron deficiency, administer an initial intramuscular injection of 100 mg at 2 to 4 days of age. Dosage may be repeated in 14 to 21 days.

(ii) For the treatment of anemia due to iron deficiency, administer an intramuscular injection of 200 mg.

(3) Nos. 000061 and 062408 for use of product described in paragraph (a)(1)(i) of this section as follows:

(i) For the prevention of iron deficiency anemia, administer intramuscularly an amount of drug containing 100 to 150 mg of elemental iron to animals from 1 to 3 days of age.

(ii) For the treatment of iron deficiency anemia, administer intramuscularly an amount of drug containing 100 to 200 mg of elemental iron per animal. Dosage may be repeated in 10 days to 2 weeks.

(4) Nos. 051311 and 053501 for use of product described in paragraph (a)(1)(ii) of this section as follows:

(i) For prevention of iron deficiency anemia, administer 1 mL by intramuscular injection at 2 to 5 days of age. Dosage may be repeated at 2 weeks of age.

(ii) For treatment of iron deficiency anemia, administer 1 to 2 mL by intramuscular injection at 5 to 28 days of age.

(5) No. 053501 for use of product described in paragraph (a)(1)(iii) of this section as follows:

(i) For prevention of anemia due to iron deficiency, administer 100 mg by intramuscular or subcutaneous injection at 2 to 4 days of age.

(ii) For treatment of anemia due to iron deficiency, administer 100 mg by intramuscular or subcutaneous injection up to 4 weeks of age.

(6) Nos. 058005 and 059130 for use of product described in paragraph (a)(1)(iii) of this section as follows:

(i) For prevention of anemia due to iron deficiency, administer 100 mg by intramuscular injection at 2 to 4 days of age.

(ii) For treatment of anemia due to iron deficiency, administer 100 mg by intramuscular injection. Treatment may be repeated in 10 days.

(7) Nos. 059130 and 068718 for use of product described in paragraph (a)(2) of this section as follows:

(i) For prevention of baby pig anemia due to iron deficiency, intramuscularly inject 200 mg of elemental iron (1 mL) at 1 to 3 days of age.

(ii) For treatment of baby pig anemia due to iron deficiency, intramuscularly inject 200 mg of elemental iron at the first sign of anemia.

(8) No. 062408 for use of product described in paragraph (a)(2) of this section as follows:

(i) For prevention of iron deficiency anemia, administer 200 mg intramuscularly on or before 3 days of age.

(ii) For treatment of iron deficiency anemia, administer 200 mg intramuscularly.

§ 522.1183 [Removed]

■ 5. Remove § 522.1183.

Dated: February 27, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–4603 Filed 3–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

United States Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission's regulation regarding the Commission's transfer treaty function describes the procedures and policies for making release date and supervised release term decisions for prisoners transferred under treaty to the custody of the United States for service of the remainder of their foreign sentences. The Commission is amending this regulation to: add a policy statement that the Commission, like a federal district judge in imposing a sentence, uses the U.S. Sentencing Guidelines as advisory guidelines in making decisions for a transfer treaty prisoner; and eliminate the requirement that a certified court reporter record a transfer treaty hearing.

DATES: Effective date: April 9, 2008.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U. S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The statute at 18 U.S.C. 4106A grants the Parole Commission the authority to set a release date and a term and conditions of supervised release for a prisoner transferred by treaty to the United States for service of a foreign prison term. The Commission is instructed to make these determinations ''as though the offender were convicted in a United States district court'' of an offense similar to that of the foreign offense. 18 U.S.C. 4106A(b)(1)(A). The Commission's regulation at 28 CFR 2.68 implements the statute, and contains a statement regarding decision-making criteria and the procedures used at a transfer treaty hearing. Commission decisions for transferred prisoners may be appealed to a federal court of appeals. See 18 U.S.C. 4106A(b)(2).

Before the Supreme Court's decision in *United States* v. *Booker,* 543 U.S. 220 (2005), the Commission, like a federal district judge imposing a criminal sentence, made the decisions for a transfer treaty prisoner in accordance with the U.S. Sentencing Guidelines unless it found good cause for departure. After Booker, the Commission considered the sentencing guidelines as advisory guidelines for its decision-making under 18 U.S.C. 4106A. Appellate courts have made it clear that the Commission should apply the holding in *Booker* to transfer treaty prisoner determinations. *Odili* v. *U.S. Parole Commission,* 474 F.3d 1255 (11th Cir. 2007); *Austin* v. *U.S. Parole Commission,* 448 F.3d 197 (2d Cir. 2006). The first amendment to § 2.68 sets forth an explicit policy statement that the Commission makes decisions for transferred offenders under 18 U.S.C. 4106A using the sentencing guidelines as advisory guidelines.

The second amendment eliminates the procedural requirement that a transfer treaty hearing must be recorded by a certified court reporter. When the Commission initially promulgated the regulation on transfer treaty determinations, the Commission decided, as a matter of policy, to adopt some of the procedures that were normally found in sentencing proceedings, *e.g.*, prehearing disclosure of the probation officer's post-sentence report, representation by counsel and the use of a court reporter to record the proceeding.

The Commission did not interpret the statute at section 4106A to require the Commission, an administrative agency, to adopt identical procedures for judicial proceedings in conducting its administrative hearings. In addition to the recording of the hearing by the court reporter, after the transfer treaty hearing, the hearing examiner prepares a written summary of the proceeding for the review of other decision-makers in the case.

For parole release and revocation hearings, Commission hearing examiners use digital recorders to record the hearings verbatim, and dictate hearing summaries that are transcribed for inclusion in the file. Under the amendment, the hearing examiner will follow these same procedures in transfer treaty hearings. The Commission is facing severe budget constraints in the current fiscal year, and this procedural change will be one small step in cutting costs for the agency. If an appeal is filed and a review of the verbatim record is necessary, the Commission will prepare a transcription of the hearing, or provide the digital recording for review by the court.

The Commission is promulgating these amendments as a final rule without the need for public comment because the amended policy statement only implements a legal requirement and the elimination of the court reporter provision changes only a procedural rule.

Implementation

The amended rules will take effect April 9, 2008, and will apply to transfer treaty hearings held on or after the effective date.

Executive Order 12866

The U. S. Parole Commission has determined that the final rule does not constitute a significant rule within the meaning of Executive Order 12866.

Executive Order 13132

The regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, the rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

The rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

The rule is not a ''major rule'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act), now codified at 5 U.S.C. 804(2). The rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency procedure or practice that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Final Rule

■ Accordingly, the U. S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Amend § 2.68 by revising the first sentence of paragraph (g) and the second sentence of paragraph (h) to read as follows:

§ 2.68 Prisoners transferred pursuant to treaty.

* * * * *

(g) *The decisionmaking criteria.* The Commission will consider the United States Sentencing Guidelines as advisory guidelines in making its decisions, as though the transferee were convicted in a United States District Court of a statutory offense most nearly similar to the offense of which the transferee was convicted in the foreign court. * * *

(h) *Hearing procedures.* * * * Each special transferee hearing shall be recorded by the hearing examiner. * * *

* * * * *

Dated: February 6, 2008.

Edward F. Reilly, Jr.,

Chairman, U. S. Parole Commission.

[FR Doc. E8–3986 Filed 3–7–08; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0083]

RIN 1625–AA00

Safety Zone; Molokini Crater, Maui, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone around Molokini Crater, in waters south of the island of Maui, HI. This zone is necessary to protect rescue and security assets, air crews, and the general public from hazards associated with an explosive ordnance disposal (EOD) process scheduled to take place on Molokini Crater. Entry of persons or vessels into this safety zone would be prohibited unless authorized by the Captain of the Port (COTP) Honolulu.

DATES: This rule is effective from March 1, 2008, through March 31, 2008. The Coast Guard will accept comments on this rule through March 31, 2008.

ADDRESSES: You may submit comments and related material, identified by Coast Guard docket number USCG–2008–0083, by any of the four methods listed below. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov*.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

Documents indicated in this preamble as being available in the docket are part of docket # USCG–2008–0083 and are available for inspection and copying at U.S. Coast Guard Sector Honolulu between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Jasmin Parker, U.S. Coast Guard Sector Honolulu at (808) 842–2600.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 28, 2008, we published a temporary final rule entitled Safety Zone; Molokini Crater, Maui, HI in the **Federal Register** (73 FR 4695), docket number USCG–2007–0128. We intended that safety zone to safeguard the same EOD that this rule addresses. Adverse weather prevented the EOD from occurring within the effective period of that first safety zone, so this rule is now necessary. We received no comments on the first safety zone. No public meeting was requested, and none was held.

We did not publish a notice of proposed rulemaking (NPRM) for this temporary rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It would be contrary to the public interest to delay implementing this temporary rule, as any delay might result in damage or injury to the public, vessels, and facilities in the area of Molokini Crater. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**.

Although the Coast Guard has good cause to issue this temporary rule without first publishing a proposed rule, you are invited to submit post-promulgation comments and related material regarding this rule through March 31, 2008. All comments will be reviewed as they are received. Your comments will assist us in drafting future rules should they be necessary, and may cause us to change this temporary final rule before it expires.

All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) for their Docket Management Facility to process online submissions to Coast Guard dockets. You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

Background and Purpose

During a site survey on Molokini Crater, surveyors discovered three pieces of unexploded ordnance requiring disposal. The Coast Guard, in consultation with the U.S. Fish and Wildlife Service, the State of Hawaii, the City and County of Maui, the U.S. Navy, and the Federal Aviation Administration, has determined it is necessary to close the area in the vicinity of Molokini Crater in order to minimize the dangers that fragmentation, explosive arcs, and possible fires may present to persons and vessels. Should such an incident occur, or in the event that EOD personnel would require emergency assistance, rescuers must have immediate and unencumbered access to the area. Also, vessels operating in the area might otherwise distract EOD and rescue personnel. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area of Molokini Crater.

Discussion of Rule

This temporary safety zone encompasses all waters up to and within one nautical mile of the shoreline of Molokini Crater, from the surface of the water to the ocean floor. It is effective from March 1, through March 31, 2008, but will be enforced for periods of 10 hours or less on the effective dates. Unpredictable weather and sea states make a broad date and time range necessary to safely complete

the EOD. Enforcement periods will be announced over marine band VHF channel 16 prior to enforcement to ensure ample public notification. In accordance with the general regulations in 33 CFR part 165, subpart C, no person or vessel is permitted to enter or remain in the zone except for support vessels/aircraft and support personnel, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels, aircraft, or persons in violation of this proposed rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This expectation is based on the limited duration of the zone and the limited geographic area affected by it.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect that there will be little impact to small entities due to the narrowly tailored scope of this security zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) Jasmin Parker, U.S. Coast Guard Sector Honolulu at (808) 842–2600. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and either preempts State law or imposes a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

Instruction, from further environmental documentation because it is a safety zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–168 to read as follows:

§ 165.T14–168 Safety Zone; Molokini Crater, Maui, HI

(a) *Location.* The following is a safety zone: All waters within the following geographic coordinates: 20–38.9N 156–28.5W; thence south to 20–36.7N 156–28.5W; thence east to 20–36.7N 156–31.0W; thence north to 20–38.9N 156–31.0W; thence west to 20–38.9N 156–28.5W, including all waters from the surface to the ocean floor.

(b) *Effective Dates.* This rule is effective from March 1, 2008 through March 31, 2008.

(c) *Suspension of Enforcement.* The Coast Guard will suspend enforcement of the safety zone described in this section whenever explosive ordinance disposal work is not being performed in the vicinity. Advance notice of enforcement periods and suspension of enforcement will be announced over marine band VHF channel 16.

(d) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person or vessel may enter or remain in the zone except for support vessels/aircraft and support personnel, or other vessels authorized by the Captain of the Port or his designated representatives.

(e) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: February 15, 2008.

B.A. Compagnoni,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. E8–4681 Filed 3–7–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0621; FRL–8530–7]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on November 20, 2007, and concern particulate matter (PM) emissions from fugitive dust sources and cement manufacturing plants. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on April 9, 2008.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2007–0621 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Proposed Action
II. Public Comments and EPA Responses
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I. Proposed Action

On November 20, 2007 (see 72 **Federal Register** (FR) 65285), EPA proposed to approve the following rules into the California SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	403	Fugitive Dust	06/03/05	10/20/05
SCAQMD	1156	Further Reductions of Particulate Emissions from Cement Manufacturing Facilities.	11/04/05	12/29/06

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from an unidentified person on December 20, 2007. The comment and our response are summarized below.

Comment: The commenter is critical of EPA's action to deny California's request for a waiver of Federal preemption of motor vehicle greenhouse gas emission standards announced December 19, 2007. Also, the commenter makes unsubstantiated allegations that unnamed EPA officials took bribes from GM, Ford, and Cerberus Corporation in deciding on the merits of this waiver.

Response: We proposed to approve rules reducing particulate matter emissions from local sources so that the South Coast air basin can meet the national particulate matter health standard. Our proposal did not concern California's waiver request; consequently, the comment is not germane to our proposed action.

However, we thank the commenter for his interest.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 17, 2008.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(342)(i)(C)(*4*) and (c)(348) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(342) * * *

(i) * * *

(C) * * *

(*4*) Rule 403, adopted on May 7, 1976 and amended on June 3, 2005.

* * * * *

(348) New and amended rules for the following APCDs were submitted on December 29, 2006 by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Air Pollution Control District.

(*1*) Rule 4354, adopted on August 17, 2006.

(B) South Coast Air Quality Management District.

(*1*) Rule 1156, adopted on November 4, 2005.

* * * * *

[FR Doc. E8–4147 Filed 3–7–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7766]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because

of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changed BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Talladega	Unincorporated areas of Talladega County, (07–04–6542P).	December 14, 2007; December 21, 2007; *The Daily Home*.	The Honorable James G. Hilber, Administrator, Talladega County, P.O. Box 6170, Talladega, AL 35161.	March 21, 2008	010297
Arizona:					
Maricopa	Town of Buckeye, (07–09–1734P).	December 7, 2007; December 14, 2007; *West Valley View*.	The Honorable Bobby Bryant, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Buckeye, AZ 85326.	December 19, 2007	040039
Yavapai	Unincorporated areas of Yavapai County, (07–09–1369P).	December 13, 2007; December 20, 2007; *Prescott Daily Courier*.	The Honorable Chip Davis, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	March 20, 2008	040093
California:					
Santa Barbara ...	Unincorporated areas of Santa Barbara County, (06–09–BF87P).	December 20, 2007; December 27, 2007; *Santa Barbara News-Press*.	The Honorable Brooks Firestone, Chair, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, CA 93101.	December 6, 2007	060331
Riverside	City of Corona, (07–09–1194P).	November 1, 2007; November 8, 2007; *The Press-Enterprise*.	The Honorable Eugene Montanez, Mayor, City of Corona, 400 South Vincentia Avenue, Corona, CA 92882.	February 7, 2008	060250
Colorado:					
El Paso	Unincorporated areas of El Paso County, (07–08–0324P).	December 5, 2007; December 12, 2007; *El Paso County Advertiser and News*.	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, CO 80903–2208.	March 12, 2008	080059
El Paso	Unincorporated areas of El Paso County, (07–08–0475P).	December 12, 2007; December 19, 2007; *El Paso County Advertiser and News*.	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, CO 80903.	November 30, 2007	080059

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Jefferson	City of Arvada, (07–08–0940P).	December 13, 2007; December 20, 2007; *The Golden Transcript*.	The Honorable Ken Fellman, Mayor, City of Arvada, 8101 Ralston Road, Arvada, CO 80002.	March 20, 2008	085072
Mesa	City of Grand Junction, (07–08–0859P).	December 6, 2007; December 13, 2007; *The Daily Sentinel*.	Mr. Jim Doody, Mayor, City of Grand Junction, 250 North Fifth Street, Grand Junction, CO 81501.	March 13, 2008	080117
Mesa	Unincorporated areas of Mesa County, (07–08–0859P).	December 6, 2007; December 13, 2007; *The Daily Sentinel*.	The Honorable Craig J. Meis, Chairman, Mesa County Board of Commissioners, P.O. Box 20000, Grand Junction, CO 81502–5010.	March 13, 2008	080115
Florida:					
Manatee	Unincorporated areas of Manatee County, (07–04–4406P).	December 6, 2007; December 13, 2007; *The Bradenton Herald*.	The Honorable Amy E. Stein, Chairman, Manatee County Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206–1000.	March 13, 2008	120153
Polk	City of Winter Haven, (07–04–5471P).	December 6, 2007; December 13, 2007; *News Chief*.	The Honorable Nathaniel Birdsong, Mayor, City of Winter Haven, P.O. Box 2277, Winter Haven, FL 33883.	March 13, 2008	120271
Polk	Unincorporated areas of Polk County, (07–04–5883P).	December 12, 2007; December 19, 2007; *The Polk County Democrat*.	Mr. Bob English, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	March 19, 2008	120261
Georgia: Columbia	Unincorporated areas of Columbia County, (07–04–4973P).	December 12, 2007; December 19, 2007; *Columbia County News-Times*.	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	March 19, 2008	130059
Illinois:					
Cook	City of Hickory Hills, (07–05–6033P).	December 13, 2007; December 20, 2007; *The Reporter*.	The Honorable Michael Howley, Mayor, City of Hickory Hills, 8652 West 95th Street, Hickory Hills, IL 60457.	November 30, 2007	170103
DuPage	Unincorporated areas of DuPage County, (07–05–2642P).	December 13, 2007; December 20, 2007; *Daily Herald*.	The Honorable Robert J. Schillerstorm, Chairman, DuPage County Board, 505 North County Farm Road, Wheaton, IL 60187.	March 20, 2008	170197
Kansas:					
Marshall	City of Marysville, (07–07–0767P).	December 6, 2007; December 13, 2007; *The Marysville Advocate*.	The Honorable Bernie Krug, Mayor, City of Marysville, 209 North Eighth Street, Marysville, KS 66508.	March 13, 2008	200212
Marshall	Unincorporated areas of Marshall County, (07–07–0767P).	December 6, 2007; December 13, 2007; *The Marysville Advocate*.	The Honorable Michael J. Keating, Head Commissioner, Marshall County, 1201 Broadway, Marysville, KS 66508.	March 13, 2008	200210
Kentucky: Jefferson	Metropolitan Government of Louisville-Jefferson County, (07–04–4634P).	December 13, 2007; December 20, 2007; *The Courier Journal*.	The Honorable Jerry E. Abramson, Mayor, Metropolitan Government of Louisville-Jefferson County, 527 West Jefferson Street, Louisville, KY 40202.	March 20, 2008	210120
Maryland:					
Frederick	Town of Emmitsburg, (07–03–0468P).	December 13, 2007; December 20, 2007; *The Frederick News-Post*.	The Honorable James E. Hoover, Mayor, Town of Emmitsburg, 300A–1 South Seton Avenue, Emmitsburg, MD 21727.	December 31, 2007	240029
Frederick	Unincorporated areas of Frederick County, (07–03–0468P).	December 13, 2007; December 20, 2007; *The Frederick News-Post*.	Ms. Jan Gardner, President, Board of Commissioners, Frederick County, 12 East Church Street, Frederick, MD 21701.	December 31, 2007	240027
Missouri: St. Charles	Unincorporated areas of St. Charles County, (07–07–1738P).	December 12, 2007; December 19, 2007; *St. Charles Journal*.	The Honorable Steve Ehlmann, County Executive, St. Charles County, 201 North Second Street, St. Charles, MO 63301.	December 21, 2007	290315
New Jersey: Monmouth.	Township of Neptune, (07–02–0634P).	December 13, 2007; December 20, 2007; *Asbury Park Press*.	The Honorable James Manning, Jr., Mayor, Township of Neptune, P.O. Box 1125, Neptune, NJ 07754.	November 28, 2007	340317
North Carolina: Mecklenburg.	Unincorporated areas of Mecklenburg County, (07–04–6546P).	January 14, 2008; January 21, 2008; *The Charlotte Observer*.	Mr. Harry Jones, Sr., Mecklenburg County Manager, 600 East Fourth Street, Charlotte, NC 28202.	April 20, 2008	370158
Ohio:					
Greene	City of Xenia, (07–05–5432P).	November 3, 2007; November 10, 2007; *Xenia Daily Gazette*.	The Honorable Phyllis Pennewitt, Mayor, City of Xenia, 101 North Detroit Street, Xenia, OH 45385.	February 11, 2008	390197
Greene	Unincorporated areas of Greene County, (07–05–5432P).	November 3, 2007; November 10, 2007; *Xenia Daily Gazette*.	The Honorable Ralph Harper, President, Greene County Board of Commissioners, 35 Greene Street, Xenia, OH 45385.	February 11, 2008	390193
Oregon: Clackamas	City of Wilsonville, (07–10–0469P).	December 12, 2007; December 19, 2007; *Wilsonville Spokesman*.	The Honorable Charlotte Lehan, Mayor, City of Wilsonville, 29786 Southwest Lehan Court, Wilsonville, OR 97070.	December 31, 2007	410025
South Carolina:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Greenville	Unincorporated areas of Greenville County, (07–04–4899P).	December 13, 2007; December 20, 2007; *The Greenville News*.	The Honorable Butch Kirven, Chairman, Greenville County Council, 213 League Road, Simpsonville, SC 29681.	March 20, 2008	450089
Greenville	Unincorporated areas of Greenville County, (07–04–5198P).	December 13, 2007; December 20, 2007; *The Greenville News*.	Mr. Joseph Kernell, County Administrator, Greenville County, 301 University Ridge, Suite 2400, Greenville, SC 29601.	March 20, 2008	450089
Greenville	Unincorporated areas of Greenville County, (07–04–5413P).	December 13, 2007; December 20, 2007; *The Greenville News*.	The Honorable Butch Kirven, Chairman, Greenville County Council, 213 League Road, Simpsonville, SC 29681.	March 20, 2008	450089
South Dakota: Pennington.	City of Hill City, (07–08–0906P).	December 12, 2007; December 19, 2007; *Hill City Prevailer-News*.	The Honorable Don Voorhees, Mayor, City of Hill City, City Hall, 324 Main Street, Hill City, SD 57745.	November 30, 2007	460116
Texas:					
Collin	City of McKinney, (07–06–1354P).	December 13, 2007; December 20, 2007; *McKinney Courier-Gazette*.	The Honorable Bill Whitfield, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75070.	March 20, 2008	480135
Collin	City of McKinney, (08–06–0334P).	December 6, 2007; December 13, 2007; *McKinney Courier-Gazette*.	The Honorable Bill Whitfield, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	November 21, 2007	480135
Collin and Dallas	City of Sachse, (07–06–2553P).	December 14, 2007; December 21, 2007; *The Rowlett Lakeshore Times*.	The Honorable Mike Felix, Mayor, City of Sachse, 5109 Peachtree Lane, Sachse, TX 75048.	March 21, 2008	480186
Dallas	Town of Highland Park, (07–06–1969P).	December 13, 2007; December 20, 2007; *The Park Cities News*.	The Honorable William D. White, Jr., Mayor, Town of Highland Park, 4700 Drexel Drive, Highland Park, TX 75205.	March 20, 2008	480178
El Paso	City of El Paso, (07–06–2364P).	December 13, 2007; December 20, 2007; *El Paso Times*.	The Honorable John Cook, Mayor, City of El Paso, Two Civic Center Plaza, Tenth Floor, El Paso, TX 79901.	November 30, 2007	480214
Johnson	City of Burleson, (07–06–2685P).	December 12, 2007; December 19, 2007; *Burleson Star*.	The Honorable Kenneth Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	March 19, 2008	485459
Randall	City of Canyon, (07–06–1472P).	December 16, 2007; December 23, 2007; *The Canyon News*.	The Honorable Quinn Alexander, Mayor, City of Canyon, 301 16th Street, Canyon, TX 79015.	March 24, 2008	480533
Randall	Unincorporated areas of Randall County, (07–06–1472P).	December 16, 2007; December 23, 2007; *The Canyon News*.	The Honorable Ernie Houdashell, Randall County Judge, 400 16th Street, Canyon, TX 79015.	March 24, 2008	480532
Tarrant	City of Grapevine, (07–06–1696P).	December 6, 2007; December 13, 2007; *Northeast Tarrant Star-Telegram*.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76099.	November 21, 2007	480598
Tarrant	City of North Richland Hills, (07–06–2421P).	December 13, 2007; December 20, 2007; *Fort Worth Star-Telegram*.	The Honorable T. Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, TX 76180.	March 20, 2008	480607
Travis	City of Lakeway, (07–06–1024P).	December 6, 2007; December 13, 2007; *Austin American-Statesman*.	The Honorable Steve Swan, Mayor, City of Lakeway, 1102 Lohman's Crossing, Lakeway, TX 78734.	December 20, 2007	481303
Virginia:					
Fauquier	Unincorporated areas of Fauquier County, (07–03–1209P).	December 5, 2007; December 12, 2007; *Fauquier Times Democrat*.	The Honorable Harry Atherton, Chairman, Fauquier County Board of Supervisors, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	March 12, 2008	510055
Fauquier	Unincorporated areas of Fauquier County, (07–03–1250P).	October 31, 2007; November 7, 2007; *Fauquier Times Democrat*.	The Honorable Harry Atherton, Chairman, Fauquier County Board of Supervisors, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	February 7, 2008	510055
West Virginia: Jefferson.	Unincorporated areas of Jefferson County, 07–03–0824P).	December 13, 2007; December 20, 2007; *The Journal*.	The Honorable Frances Morgan, President, Jefferson County Board of Commissioners, P.O. Box 250, Charles Town, WV 25414.	March 20, 2008	540065

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: February 26, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–4621 Filed 3–7–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Madison, (FEMA Docket No: B–7750).	City of Huntsville (06–04–BY84P).	September 21, 2007; September 28, 2007; *Madison County Record.*	The Honorable Loretta Spencer, Mayor, City of Huntsville, P.O. Box 308, Huntsville, AL 35804.	October 1, 2007	010153
Madison, (FEMA Docket No: B–7750).	Unincorporated areas of Madison County (06–04–BY84P).	September 21, 2007; September 28, 2007; *Madison County Record.*	The Honorable Mike Gillespie, Chairman, Madison County Commission, 6994 Courthouse 700, 100 North Side Square, Huntsville, AL 35801.	October 1, 2007	010151
Arizona: Coconino, (FEMA Docket No: B–7750).	Unincorporated areas of Coconino County (07–09–0172P).	September 13, 2007; September 20, 2007; *Arizona Daily Sun.*	The Honorable Elizabeth Archuleta, Chairperson, Coconino County, Board of Commissioners, 2500 North Fort Valley Road, Building One, Flagstaff, AZ 86001.	September 27, 2007	040019
California:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Sacramento, (FEMA Docket No: B–7738).	Unincorporated areas of Sacramento County (06–09–B222P).	August 30, 2007; September 6, 2007; *The Daily Recorder*.	The Honorable Don Nottoli, Chairman, Sacramento County, Board of Supervisors, 700 H Street, Suite 2450, Sacramento, CA 95814.	December 6, 2007	060262
San Joaquin, (FEMA Docket No: B–7750).	City of Lathrop (07–09–0844P).	September 20, 2007; September 27, 2007; *The Record*.	The Honorable Apolinar Sangalang, Mayor, City of Lathrop, 16775 Howland Road, Suite One, Lathrop, CA 95330.	August 31, 2007	060738
Yuba, (FEMA Docket No: B–7750).	Unincorporated areas of Yuba County (07–09–1090P).	September 20, 2007; September 27, 2007; *Marysville Appeal-Democrat*.	Mr. Robert Bendorf, County Administrator, Yuba County, 915 Eighth Street, Suite 115, Marysville, CA 95901.	August 31, 2007	060427
Colorado:					
Boulder, (FEMA Docket No: B–7750).	City of Longmont (07–08–0506P).	September 6, 2007; September 13, 2007; *The Daily Camera*.	The Honorable Julia Pirnack, Mayor, City of Longmont 864 Fourth Avenue, Longmont, CO 80501.	December 13, 2007	080027
Boulder, (FEMA Docket No: B–7750).	Unincorporated areas of Boulder County (07–08–0506P).	September 6, 2007; September 13, 2007; *The Daily Camera*.	The Honorable Ben Pearlman, Chairman, Boulder County, Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	December 13, 2007	080023
Delaware:					
Kent, (FEMA Docket No: B–7738).	Unincorporated areas of Kent County (07–03–1056P).	August 22, 2007; August 29, 2007; *Dover Post*.	The Honorable P. Brooks Banta, President, Kent County, Board of Commissioners, 555 Bay Road, Dover, DE 19901.	November 28, 2007	100001
New Castle, (FEMA Docket No: B–7738).	Unincorporated areas of New Castle County (07–03–0845P).	August 31, 2007, September 7, 2007, *Newark Post*.	The Honorable Christopher Coons, County Executive, New Castle County, 87 Reads Way Corporate Commons, New Castle, DE 19801.	December 7, 2007	105085
Georgia:					
Athens-Clarke, (FEMA Docket No: B–7754).	Unincorporated areas of Athens-Clarke County (07–04–1274P).	October 5, 2007; October 12, 2007; *Athens Banner-Herald*.	The Honorable Heidi Davison, Mayor, Athens-Clarke County, 235 Wells Drive, Athens, GA 30606.	September 14, 2007	130040
Barrow, (FEMA Docket No: B–7750).	Unincorporated areas of Barrow County (07–04–2937P).	September 12, 2007; September 19, 2007; *The Barrow County News*.	The Honorable Douglas H. Garrison, Chairman, Barrow County, Board of Commissioners, 233 East Broad Street, Winder, GA 30680.	December 19, 2007	130497
Bryan, (FEMA Docket No: B–7750).	City of Richmond Hill (07–04–5472P).	September 12, 2007; September 19, 2007; *Bryan County News*.	The Honorable Richard R. Davis, Mayor, City of Richmond Hill, P.O. Box 250, Richmond Hill, GA 31324.	December 19, 2007	130018
Bryan, (FEMA Docket No: B–7750).	Unincorporated areas of Bryan County (07–04–5472P).	September 12, 2007; September 19, 2007; *Bryan County news*.	The Honorable Jimmy Burnsed, Chairman, Bryan County, Board of Commissioners, 116 Lanier Street, Pembroke, GA 31321.	December 19, 2007	130016
Cherokee, (FEMA Docket No: B–7750).	Unincorporated areas of Cherokee County (07–04–3183P).	September 14, 2007; September 21, 2007; *Cherokee Tribune*.	The Honorable Buzz Ahrens, Chairman, Cherokee County, Board of Commissioners, 90 North Street, Suite 310, Canton, GA 30114.	August 30, 2007	130424
Gwinnett, (FEMA Docket No: B–7750).	City of Sugar Hill (07–04–3458P).	September 20, 2007; September 27, 2007; *Gwinnett Daily Post*.	The Honorable Gary Pirkle, Mayor, City of Sugar Hill, 4988 West Broad Street, Sugar Hill, GA 30518.	December 27, 2007	130474
Gwinnett, (FEMA Docket No: B–7750).	Unincorporated areas of Gwinnett County (07–04–3458P).	September 20, 2007; September 27, 2007; *Gwinnett Daily Post*.	The Honorable Charles Bannister, Chairman, Gwinnett County, Board of Commissioners, 75 Langley Drive, Lawrenceville, GA 30045.	December 27, 2007	130322
Maine: Waldo, (FEMA Docket No: B–7754).	City of Belfast (07–01–0609P).	August 11, 2007; August 16, 2007; *The Republican Journal*.	Mr. Terrence St. Peter, City Manager, City of Belfast, 131 Church Street, Belfast, ME 04915.	July 23, 2007	230129
Maryland:					
Anne Arundel, (FEMA Docket No: B–7738).	Unincorporated areas of Anne Arundel County (07–03–0081P).	August 23, 2007; August 30, 2007; *The Capital*.	The Honorable John R. Leopold, County Executive, Anne Arundel County, 44 Calvert Street, Annapolis, MD 21404.	November 29, 2007	240008
Carroll, (FEMA Docket No: B–7750).	Unincorporated areas of Carroll County (07–03–0510P).	September 13, 2007; September 20, 2007; *Carroll County Times*.	Ms. Julia W. Gouge, President, Carroll County Board of Commissioners, Carroll County Office Building, 225 North Center Street, Westminster, MD 21157.	August 28, 2007	240015
Massachusetts:					
Barnstable, (FEMA Docket No: B–7738).	Town of Falmouth (07–01–1028P).	August 23, 2007; August 30, 2007; *Cape Cod Times*.	The Honorable Kevin Murphy, Chairman, Falmouth Board of Selectmen, Falmouth Town Hall, 59 Town Hall Square, Falmouth, MA 02540.	November 29, 2007	255211
Plymouth, (FEMA Docket No: B–7750).	Town of Hanover (07–01–0795P).	September 19, 2007; September 26, 2007; *Hanover Mariner*.	The Honorable R. Alan Rugman, Chairman, Board of Selectmen, 550 Hanover Street, Hanover, MA 02339.	December 26, 2007	250266
Minnesota:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Polk, (FEMA Docket No: B–7750).	City of East Grand Forks (07–05–2270P).	September 29, 2007; October 3, 2007; *The Exponent*.	The Honorable Lynn Stauss, Mayor, City of East Grand Forks, City Hall, 600 Demers Avenue, East Grand Forks MN 56721.	January 2, 2008	275236
Polk, (FEMA Docket No: B–7750).	Unincorporated areas of Polk County (07–05–2270P).	September 29, 2007; October 3, 2007; *The Exponent*.	The Honorable Warren Affeldt, Chairman, Polk County, Board of Commissioners, 612 North Broadway, Suite 215, Crookston, MN 56716.	January 2, 2008	270503
Mississippi:					
Rankin, (FEMA Docket No: B–7750).	City of Brandon (07–04–3666P).	September 12, 2007; September 19, 2007; *Rankin County News*.	The Honorable Carlo Martella, Mayor, City of Brandon, P.O. Box 1539, Brandon, MS 39043.	August 24, 2007	280143
Rankin, (FEMA Docket No: B–7750).	City of Pearl (07–04–3666P).	September 12, 2007; September 19, 2007; *Rankin County News*.	The Honorable Jimmy Foster, Mayor, City of Pearl, P.O. Box 5948, Pearl, MS 39288–5948.	August 24, 2007	280145
Rankin, (FEMA Docket No: B–7750).	Unincorporated areas of Rankin County (07–04–3666P).	September 12, 2007; September 19, 2007; *Rankin County News*.	The Honorable Ken Martin, Chairman, Rankin County, Board of Supervisors, 211 East Government Street, Suite A, Brandon, MS 39042.	August 24, 2007	280142
Missouri:					
Lincoln, (FEMA Docket No: B–7750).	Unincorporated areas of Lincoln County (06–07–BA52P).	August 22, 2007; August 29, 2007; *The Troy Free Press*.	The Honorable Sean O'Brien, Presiding Commissioner, Lincoln County, Lincoln County Courthouse, 201 Main Street, Troy, MO 63379.	November 28, 2007	290869
St. Louis, (FEMA Docket No: B–7750).	City of Valley Park (07–07–1587P).	September 13, 2007; September 20, 2007; *The St. Louis Daily Record*.	The Honorable Jeffery Whitteaker, Mayor, City of Valley Park, 320 Benton Street, Valley Park, MO 63088.	August 29, 2007	290391
Montana: Lincoln, (FEMA Docket No: B–7750).	Unincorporated areas of Lincoln County (07–08–0447P).	August 2, 2007; August 9, 2007; *Tobacco Valley News*.	The Honorable Rita Windom, Chairwoman, Lincoln County, Board of Commissioners, 512 California Avenue, Libby, MT 59923.	July 10, 2007	300157
Nevada: Clark, (FEMA Docket No: B–7750).	Unincorporated areas of Clark County (06–09–BG37P).	September 6, 2007; September 13, 2007; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	December 13, 2007	320003
New Mexico: Bernalillo, (FEMA Docket No: B–7750).	City of Albuquerque (07–06–1449P).	October 4, 2007; October 11, 2007; *The Albuquerque Journal*.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	September 18, 2007	350002
New York: Jefferson, (FEMA Docket No: B–7727).	Town of Pamelia (07–02–0466P).	June 21, 2007; June 28, 2007; *Watertown Daily Times*.	The Honorable Lawrence Longway, Town Supervisor, Town of Pamelia, 25859 State Route 37, Watertown, New York 13601.	December 27, 2007	360346
Oklahoma:					
Carter, (FEMA Docket No: B–7750).	City of Ardmore (07–06–0167P).	September 6, 2007; September 13, 2007; *Daily Ardmoreite*.	The Honorable John Moore, Mayor, City of Ardmore, P.O. Box 249, Ardmore, OK 73402.	December 13, 2007	400031
Cleveland, (FEMA Docket No: B–7738).	City of Moore (07–06–1613P).	August 30, 2007; September 6, 2007; *The Norman Transcript*.	The Honorable Glenn Lewis, Mayor, City of Moore, 301 North Broadway, Moore, OK 73160.	December 6, 2007	400044
Pennsylvania: York, (FEMA Docket No: B–7754).	Township of Dover (07–03–0878P).	September 13, 2007; September 20, 2007; *The York Dispatch*.	The Honorable Shane Patterson, Chairman, Board of Supervisors, Dover Township Municipal Building, 2480 West Canal Road, Dover, PA 17315.	December 20, 2007	420920
Rhode Island: Providence, (FEMA Docket No: B–7750).	City of Cranston (07–01–0910P).	August 23, 2007; August 30, 2007; *Cranston Herald*.	The Honorable Michael Napolitano, Mayor, City of Cranston, Cranston City Hall, 869 Park Avenue, Cranston, RI 02910.	July 31, 2007	445396
South Carolina: Aiken, (FEMA Docket No: B–7750).	City of North Augusta (07–04–2732P).	September 13, 2007; September 20, 2007; *Aiken Standard*.	The Honorable Lark W. Jones, Mayor, City of North Augusta, P.O. Box 6400, North Augusta, SC 29861.	August 27, 2007	450007
Texas:					
Austin, (FEMA Docket No: B–7750).	City of Sealy (07–06–2014P).	September 18, 2007; September 25, 2007; *The Sealy News*.	The Honorable Russell L. Koym, Mayor, City of Sealy, P.O. Box 517, Sealy, TX 77474.	December 26, 2007	480017
Bexar, (FEMA Docket No: B–7738).	City of San Antonio (06–06–BF16P).	August 16, 2007; August 23, 2007; *Daily Commercial Recorder*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	November 22, 2007	480045
Bexar, (FEMA Docket No: B–7750).	City of San Antonio (06–06–B105P).	September 13, 2007; September 20, 2007; *Daily Commercial Recorder*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	August 30, 2007	480045
Bexar, (FEMA Docket No: B–7750).	City of San Antonio (07–06–0793P).	September 27, 2007; October 4, 2007; *Daily Commercial Recorder*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	January 3, 2008	480045
Bexar, (FEMA Docket No: B–7738).	Unincorporated areas of Bexar County (06–06–BF16P).	August 16, 2007; August 23, 2007; *Daily Commercial Recorder*.	The Honorable Nelson W. Wolff, Bexar County Judge, Bexar County Courthouse, 233 North Pecos, Suite 420, San Antonio, TX 78207.	November 22, 2007	480035

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Brazos, (FEMA Docket No: B–7750).	City of Bryan (05–06–1677P).	September 6, 2007; September 13, 2007; *The Eagle*.	The Honorable D. Mark Conlee, Mayor, City of Bryan, 300 South Texas Avenue, Bryan, TX 77803.	December 13, 2007	480082
Brazos, (FEMA Docket No: B–7750).	Unincorporated areas of Brazos County (05–06–1677P).	September 6, 2007; September 13, 2007; *The Eagle*.	The Honorable Randy Sims, Brazos County Judge, 300 East 26th Street, Suite 114, Bryan, TX 77803.	December 13, 2007	481195
Collin, (FEMA Docket No: B–7738).	City of Allen (06–06–BK36P).	August 23, 2007; August 30, 2007; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	November 29, 2007	480131
Collin, (FEMA Docket No: B–7750).	City of Allen (07–06–0941P).	August 30, 2007; September 6, 2007; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	August 16, 2007	480131
Collin, (FEMA Docket No: B–7750).	City of Anna (07–06–1349P).	September 13, 2007; September 20, 2007; *McKinney Courier-Gazette*.	The Honorable Kenneth Pelham, Mayor, City of Anna, P.O. Box 776, Anna, TX 75409.	December 20, 2007	480132
Dallas, (FEMA Docket No: B–7750).	City of Irving (06–06–BA90P).	September 20, 2007; September 27, 2007; *Dallas Morning News*.	The Honorable Herbert A. Gears, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	December 27, 2007	480180
El Paso, (FEMA Docket No: B–7738).	City of El Paso (06–06–B807P).	August 23, 2007; August 30, 2007; *El Paso Times*.	The Honorable John Cook, Mayor, City of El Paso, City Hall, 10th Floor, Two Civic Center Plaza, El Paso, TX 79901.	August 6, 2007	480214
Harris, (FEMA Docket No: B–7750).	Unincorporated areas of Harris County (07–06–1673P).	September 20, 2007; September 27, 2007; *Houston Chronicle*.	The Honorable Ed Emmett, Harris County Judge, 1001 Preston, Suite 911, Houston, TX 77002.	December 27, 2007	480287
Parker, (FEMA Docket No: B–7738).	Town of Annetta North (07–06–0630P).	August 23, 2007; August 30, 2007; *Weatherford Democrat*.	The Honorable Ken Hall, Mayor, Town of Annetta North, P.O. Box 1238, Aledo, TX 76008.	November 29, 2007	481664
Parker, (FEMA Docket No: B–7738).	Unincorporated areas of Parker County (07–06–0630P).	August 23, 2007; August 30, 2007; *Weatherford Democrat*.	The Honorable Mark Riley, Parker County Judge, Parker County Courthouse, One Courthouse Square, Weatherford, TX 76086.	November 29, 2007	480520
Tarrant, (FEMA Docket No: B–7750).	City of Fort Worth (07–06–0876P).	September 13, 2007; September 20, 2007; *Fort Worth Star-Telegram*.	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	December 20, 2007	480596
Virginia: Chesterfield, (FEMA Docket No: B–7750).	Unincorporated areas of Chesterfield County (07–03–1156P).	September 20, 2007; September 27, 2007; *Richmond Times-Dispatch*.	The Honorable Kelly E. Miller, Chairman, Chesterfield County, Board of Supervisors, P.O. Box 40, Chesterfield, VA 23832–0040.	December 27, 2007	510035
Wisconsin:					
Waukesha, (FEMA Docket No: B–7750).	Village of Dousman (06–05–B016P).	September 27, 2007; October 4, 2007; *The Freeman*.	The Honorable Jack Nissen, Village President, Village of Dousman, 118 South Main Street, Dousman, WI 53118.	January 3, 2008	550480
Waukesha, (FEMA Docket No: B–7750).	Unincorporated areas of Waukesha County (06–05–B016P).	September 27, 2007; October 4, 2007; *The Freeman*.	The Honorable Daniel Vrakas, County Executive, Waukesha County, 1320 Pewaukee Road, Room 320, Waukesha, WI 53188.	January 3, 2008	550476

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: February 20, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–4722 Filed 3–7–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104,

and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Cook County, Illinois, and Incorporated Areas Docket No.: FEMA–B–7735			
Calumet Union Drainage Ditch	At confluence with Little Calumet River	+592	Village of South Holland, City of Harvey, City of Markham, Unincorporated Areas of Cook County.
	500 feet upstream of confluence with Calumet Union Drainage Ditch Southwest Branch.	+608	
Calumet Union Drainage Ditch Southwest Branch.	At confluence with Calumet Union Drainage Ditch	+608	City of Markham, Unincorporated Areas of Cook County.
	Approximately 1100 feet downstream of 167th Street	+608	
Deer Creek	At confluence with Thorn Creek	+616	Village of Glenwood, Unincorporated Areas of Cook County.
	At confluence of Third Creek, downstream of Cottage Grove Avenue.	+621	
Farmer's Creek	At pump station flood wall, 150 feet downstream of Busey Highway.	+630	City of Des Plaines, Unincorporated Areas of Cook County.
	Approximately 1000 feet upstream of Emerson Street	+633	
Higgins Creek	Just downstream of Willie Road	+655	City of Des Plaines, Unincorporated Areas of Cook County.
	Just downstream of Hamilton Road	+659	
Higgins Creek Tributary A	Just downstream of Interstate 90	+659	City of Des Plaines, Unincorporated Areas of Cook County, Village of Elk Grove Village.
	80 feet upstream of Higgins Road	+665	
Higgins Creek Tributary B	Confluence with Higgins Creek Tributary A	+659	Unincorporated Areas of Cook County, Village of Elk Grove Village.
	Just downstream of Elmhurst Road	+660	
Little Calumet River	At confluence with Calumet Sag Channel	+585	Village of South Holland, City of Blue Island, City of Calumet City, City of Harvey, Unincorporated Areas of Cook County, Village of Dixmoor, Village of Dolton, Village of Lansing, Village of Riverdale.
	Illinois—Indiana State Line	+596	
Midlothian Creek	At confluence with Little Calumet River	+587	City of Blue Island.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	200 feet upstream of Chatham Street	+589	
North Creek	At confluence with Thorn Creek	+606	Unincorporated Areas of Cook County.
	Just downstream of Calumet Expressway	+607	
Poplar Creek Tributary A	Just upstream of Higgins Road	+809	Village of Hoffman Estates.
	Just downstream of Greenspoint Parkway	+813	
Prairie Creek	At confluence with Farmer's Creek	+631	City of Des Plaines, City of Park Ridge, Unincorporated Areas of Cook County, Village of Niles.
	Just downstream of Greenwood Road	+643	
Thorn Creek	At confluence with Little Calumet River	+595	Village of South Holland, City of Calumet City, Unincorporated Areas of Cook County, Village of Glenwood, Village of Thornton.
	Approximately 500 feet upstream of the confluence with Deer Creek.	+616	
Weller Creek	Approximately 570 feet downstream of Wisconsin Central Railroad.	+637	Village of Mount Prospect, City of Des Plaines.
	At downstream side of Central Road	+664	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Blue Island
Maps are available for inspection at Building Department, 13049 Greenwood Avenue, Blue Island, IL 60406.
City of Calumet City
Maps are available for inspection at Inspectional Services Department, 687 Wentworth Road, Calumet City, IL 60409.
City of Des Plaines
Maps are available for inspection at City of Des Plaines Civic Center, 1420 Miner St, Des Plaines, IL 60016.
City of Harvey
Maps are available for inspection at Harvey City Hall, Planning and Development Center, 15320 Broadway Avenue, Harvey, IL 60426.
City of Markham
Maps are available for inspection at Markham City Hall, 16313 South Kedzie Parkway, Markham, IL 60426.
City of Park Ridge
Maps are available for inspection at Public Works Department, 505 Butler Place, Park Ridge, IL 60068.
Unincorporated Areas of Cook County
Maps are available for inspection at Cook County Building and Zoning Department, 69 West Washington, Suite 2830, Chicago, IL 60602.
Village of Dixmoor
Maps are available for inspection at 170 West 145th Street, Dixmoor, IL 60419.
Village of Dolton
Maps are available for inspection at Dolton Village Hall, Building Department, 14014 Park Avenue, Dolton, IL 60419.
Village of Elk Grove Village
Maps are available for inspection at Engineering and Community Development Department, 901 Wellington Ave, Elk Grove Village, IL 60007.
Village of Glenwood
Maps are available for inspection at Glenwood Building Department, 13 South Rebecca Street, Glenwood, IL 60425.
Village of Hoffman Estates
Maps are available for inspection at Hoffman Estates Development Services Department, 1900 Hassell Rd., Hoffman Estates, IL 60169.
Village of Lansing
Maps are available for inspection at Lansing Building Department, 18200 Chicago Avenue, Lansing, IL 60438.
Village of Mount Prospect
Maps are available for inspection at Public Works Department, Engineering Division, 1700 West Central Road, Mount Prospect, IL 60056.
Village of Niles
Maps are available for inspection at Niles Public Works Department, 6849 West Touhy Avenue, Niles, IL 60714.
Village of Riverdale
Maps are available for inspection at Village Hall, Office of Community and Economic Development, 157 West 144th Street, Riverdale, IL 60827.
Village of South Holland
Maps are available for inspection at Village Planning & Development Department, 16226 Wausau Avenue, South Holland, IL 60473.
Village of Thornton
Maps are available for inspection at Village Hall, 115 E Margaret St, Thornton, IL 60476.

Miami County, Kansas and Incorporated Areas
Docket No.: FEMA–P–7913

Bull Creek	Approximately 480 feet upstream of the confluence with the Marais Des Cygnes River.	+837	City of Paola, Miami County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 11,250 feet upstream of the confluence of Ten Mile Creek.	+874	
Hickory Creek	At the confluence with Bull Creek	+857	City of Paola, Miami County (Unincorporated Areas).
	Approximately 185 feet downstream of South East Street	+867	
Marais Des Cygnes River	At the confluence of Pottawatomie Creek	+858	City of Osawatomie, Miami County (Unincorporated Areas).
	Approximately 6,800 feet upstream of Eighth Street	+863	
Middle Creek	At the southern county boundary	+823	Miami County (Unincorporated Areas).
	Approximately 2,880 feet upstream of Jingo Road	+946	
M.K.T. Tributary to Bull Creek	At the confluence with Bull Creek	+864	City of Paola, Miami County (Unincorporated Areas).
	Approximately 40 feet downstream of the Union Pacific Railroad.	+867	
North Wea Creek	At the confluence with South Wea Creek	+889	Miami County (Unincorporated Areas).
	At West 215th Street	+1,073	
Pottawatomie Creek	At the confluence with Marais Des Cygnes River	+859	City of Osawatomie, Miami County (Unincorporated Areas).
	Approximately 4,920 feet upstream of the confluence with Marais Des Cygnes River.	+859	
South Wea Creek	At the confluence with Bull Creek	+854	City of Louisburg, City of Paola, Miami County (Unincorporated Areas).
	At Metcalf Road	+983	
Sweetwater Creek	At the confluence with Ten Mile Creek	+921	Miami County (Unincorporated Areas).
	At West 215th Street	+987	
Ten Mile Creek	At the confluence with Bull Creek	+871	Miami County (Unincorporated Areas).
	At West 215th Street	+1,048	
Tributary to Hickory Creek	At the confluence with Hickory Creek	+857	City of Paola.
	Approximately 30 feet downstream of East Osage Street.	+858	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Louisburg, Miami County, Kansas
Maps are available for inspection at City Hall, 5 South Peoria, Suite 102, Louisburg, Kansas.
City of Osawatomie, Miami County, Kansas
Maps are available for inspection at City Hall, 439 Main Street, Osawatomie, Kansas.
City of Paola, Miami County, Kansas
Maps are available for inspection at City Hall, 19 East Peoria, Paola, Kansas.
Unincorporated Areas of Miami County, Kansas
Maps are available for inspection at Miami County Administration Building, 201 South Pearl Street, Suite 201, Paola, Kansas.

Anson County, North Carolina and Incorporated Areas
Docket Nos.: FEMA–D–7806 and FEMA–D–7826

Bailey Creek	At the confluence with North Fork Jones Creek	+257	Unincorporated Areas of Anson County.
	At the confluence of Brush Fork and Reedy Fork	+282	
Bell Creek	At the confluence with Deadfall Creek	+283	Unincorporated Areas of Anson County.
	Approximately 1.0 mile upstream of Little Huntley Road (State Road 1217).	+308	
Big Branch	At the confluence with Lanes Creek	+333	Unincorporated Areas of Anson County.
	Approximately 1,450 feet upstream of Birmingham Road (State Road 1436).	+343	
Big Branch North	At the confluence with Cribs Creek	+256	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of the confluence with Cribs Creek.	+271	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Black Jack Branch	At the confluence with Brown Creek	+291	Unincorporated Areas of Anson County.
	Approximately 1.2 miles upstream of Lower White Store Road (State Road 1252).	+320	
Blackwell Branch	Approximately 1,000 feet upstream of the confluence with Lanes Creek.	+365	Unincorporated Areas of Anson County.
	At the confluence of Caudle Branch and Maness Branch	+424	
Boles Creek	At the confluence with Deadfall Creek	+293	Unincorporated Areas of Anson County.
	Approximately 550 feet downstream of Little Huntley Road (State Road 1217).	+301	
Brown Creek	At the confluence with Pee Dee River	+213	Unincorporated Areas of Anson County, Town of Polkton.
	Approximately 0.9 mile upstream of Okey High Road (State Road 1229).	+335	
Brown Creek Tributary 1	At the confluence with Brown Creek	+251	Unincorporated Areas of Anson County, Town of Polkton.
	Approximately 1,450 feet upstream of Barrass Street	+310	
Brown Creek Tributary 2	At the confluence with Brown Creek	+255	Town of Polkton.
	Approximately 480 feet upstream of East Freemont Street	+313	
Brown Creek Tributary 3	At the confluence with Brown Creek	+296	Unincorporated Areas of Anson County.
	Approximately 0.9 mile upstream of the confluence with Brown Creek.	+309	
Brown Creek Tributary 4	At the confluence with Brown Creek	+303	Unincorporated Areas of Anson County.
	Approximately 1.0 mile upstream of the confluence of Brown Creek Tributary 4A.	+329	
Brown Creek Tributary 4A	At the confluence with Brown Creek Tributary 4	+311	Unincorporated Areas of Anson County.
	Approximately 1.1 miles upstream of the confluence with Brown Creek Tributary 4.	+334	
Brush Fork	At the confluence with Bailey Creek and Reedy Fork	+282	Unincorporated Areas of Anson County, Town of Wadesboro.
	Approximately 360 feet downstream of South Park Road	+361	
Brush Fork Tributary 1	At the confluence with Brush Fork	+315	Town of Wadesboro.
	Approximately 0.5 mile upstream of East Caswell Street	+344	
Brush Fork Tributary 2	At the confluence with Brush Fork	+324	Town of Wadesboro.
	Approximately 80 feet downstream of U.S. 52 Highway South	+351	
Brush Fork Tributary 3	At the confluence with Brush Fork	+328	Town of Wadesboro.
	Approximately 1,820 feet upstream of Wortham Street	+341	
Buffalo Creek	At the confluence with Pee Dee River	+217	Unincorporated Areas of Anson County.
	Approximately 430 feet upstream of Railroad	+259	
Buffalo Creek South	At the confluence with Pee Dee River	+189	Unincorporated Areas of Anson County.
	Approximately 650 feet downstream of Clark Mountain Road (State Road 1744).	+216	
Buffalo Creek Tributary 1	At the confluence with Buffalo Creek	+218	Unincorporated Areas of Anson County.
	Approximately 610 feet upstream of Pinkston River Road (State Road 1627).	+220	
Cabin Branch	At the confluence with Brown Creek	+229	Unincorporated Areas of Anson County.
	Approximately 1,060 feet upstream of Jacks Branch Road (State Road 1637).	+249	
Camp Branch	At the confluence with Rocky River	+220	Unincorporated Areas of Anson County.
	Approximately 780 feet upstream of Railroad	+267	
Camp Branch Tributary 1	At the confluence with Camp Branch	+220	Unincorporated Areas of Anson County.
	Approximately 1,540 feet downstream of US 52 Highway North.	+238	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Canal Branch	At the confluence with Palmetto Branch	+217	Unincorporated Areas of Anson County, Town of Ansonville.
	Approximately 80 feet upstream of Threadgill Street	+310	
Canebreak Branch	At the confluence with Lanes Creek	+332	Unincorporated Areas of Anson County.
	Approximately 530 feet upstream of Johnson Road (State Road 1435).	+342	
Caudle Branch	At the confluence with Blackwell Branch and Maness Branch	+424	Unincorporated Areas of Anson County.
	Approximately 1,000 feet upstream of Stegall Road (State Road 1407).	+430	
Cedar Branch	At the confluence with Lanes Creek	+330	Unincorporated Areas of Anson County.
	Approximately 800 feet upstream of Bill Curlee Road (State Road 1415).	+337	
Cedar Creek	At the confluence with Pee Dee River	+210	Unincorporated Areas of Anson County.
	Approximately 0.6 mile upstream of the confluence of Cedar Creek Tributary 7.	+323	
Cedar Creek Tributary 1	At the confluence with Cedar Creek	+210	Unincorporated Areas of Anson County.
	Approximately 0.8 mile upstream of the confluence with Cedar Creek.	+221	
Cedar Creek Tributary 2	At the confluence with Cedar Creek	+210	Unincorporated Areas of Anson County.
	Approximately 0.5 mile upstream of the confluence with Cedar Creek.	+221	
Cedar Creek Tributary 3	At the confluence with Cedar Creek	+212	Unincorporated Areas of Anson County.
	Approximately 0.9 mile upstream of the confluence with Cedar Creek.	+231	
Cedar Creek Tributary 4	At the confluence with Cedar Creek	+251	Unincorporated Areas of Anson County.
	Approximately 0.5 mile upstream of the confluence with Cedar Creek.	+261	
Cedar Creek Tributary 5	At the confluence with Cedar Creek	+278	Unincorporated Areas of Anson County.
	Approximately 680 feet upstream of Doc Wyatt Road (State Road 1728).	+286	
Cedar Creek Tributary 6	At the confluence with Cedar Creek	+279	Unincorporated Areas of Anson County.
	Approximately 0.8 mile upstream of Cox Road (State Road 1711).	+310	
Cedar Creek Tributary 7	At the confluence with Cedar Creek	+292	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of the confluence with Cedar Creek.	+310	
Clay Creek Tributary	At the North Carolina/South Carolina State boundary	+337	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of the North Carolina/South Carolina State boundary.	+341	
Cranes Branch	At the confluence with Brown Creek	+240	Unincorporated Areas of Anson County.
	Approximately 0.6 mile upstream of Cameron Briley Road (State Road 1429).	+261	
Cribs Creek	At the confluence with Rocky River	+256	Unincorporated Areas of Anson County.
	Approximately 0.7 mile upstream of NC 742 Highway North	+383	
Culpepper Creek	At the confluence with Goulds Fork	+271	Unincorporated Areas of Anson County, Town of Wadesboro.
	Approximately 1.4 miles upstream of Avery Road	+307	
Deadfall Creek	At the North Carolina/South Carolina State boundary	+244	Unincorporated Areas of Anson County.
	Approximately 660 feet downstream of Long Pine Church Road (State Road 1220).	+301	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Derita Creek	At the confluence with Brush Fork	+314	Unincorporated Areas of Anson County, Town of Wadesboro.
	Approximately 1,460 feet upstream of Railroad	+355	
Flat Fork	At the confluence with Brown Creek	+213	Unincorporated Areas of Anson County.
	Approximately 1.5 miles upstream of the confluence with Flat Fork Tributary 1.	+253	
Flat Fork Tributary 1	At the confluence with Flat Fork	+230	Unincorporated Areas of Anson County.
	Approximately 2.2 miles upstream of the confluence with Flat Fork.	+287	
Goulds Fork	At the confluence with Brown Creek	+222	Unincorporated Areas of Anson County, Town of Wadesboro.
	Approximately 0.9 mile upstream of White Store Road (State Road 1205).	+330	
Goulds Fork Tributary 1	At the confluence with Goulds Fork	+245	Unincorporated Areas of Anson County.
	Approximately 0.5 mile downstream of NC 742 Highway North.	+279	
Goulds Fork Tributary 2	At the confluence with Goulds Fork	+269	Unincorporated Areas of Anson County, Town of Wadesboro.
	Approximately 0.5 mile upstream of Avery Road	+286	
Grindstone Branch	At the confluence with Goulds Fork	+237	Unincorporated Areas of Anson County, Town of Wadesboro.
	Approximately 0.7 mile upstream of Powe Street (State Road 1655).	+290	
Grindstone Branch Tributary 1	At the confluence with Grindstone Branch	+272	Unincorporated Areas of Anson County.
	Approximately 1,820 feet upstream of Airport Road (State Road 1645).	+304	
Hale Creek	At the confluence with Jones Creek	+192	Unincorporated Areas of Anson County.
	Approximately 1,690 feet downstream of Knotts Road (State Road 1807).	+260	
Hale Creek Tributary 1	At the confluence with Hale Creek	+213	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of the confluence with Hale Creek.	+231	
Hale Creek Tributary 2	At the confluence with Hale Creek	+233	Unincorporated Areas of Anson County.
	Approximately 0.5 mile upstream of the confluence with Hale Creek.	+248	
Hurricane Creek	At the confluence with Brown Creek	+213	Unincorporated Areas of Anson County.
	Approximately 1.3 miles upstream of Dennis Road (State Road 1649).	+233	
Island Creek	At the confluence with Pee Dee River	+139	Unincorporated Areas of Anson County.
	Approximately 1.0 mile upstream of NC Highway 145	+225	
Island Creek Tributary 1	At the confluence with Island Creek	+139	Unincorporated Areas of Anson County.
	Approximately 0.7 mile upstream of the confluence with Island Creek.	+162	
Jacks Branch (into Brown Creek).	At the confluence with Brown Creek	+224	Unincorporated Areas of Anson County.
	Approximately 700 feet upstream of Mount Vernon Road (State Road 1638).	+250	
Jenkins Branch	At the confluence with Pee Dee River	+190	Unincorporated Areas of Anson County.
	Approximately 1.6 miles upstream of the confluence with Pee Dee River.	+216	
Jones Creek	At the confluence with Pee Dee River	+128	Unincorporated Areas of Anson County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	At the confluence of North Fork Jones Creek and South Fork Jones Creek.	+230	
Jones Creek Tributary 1	At the confluence with Jones Creek	+129	Unincorporated Areas of Anson County.
	Approximately 0.9 mile upstream of the confluence with Jones Creek.	+150	
Kelly Branch	At the confluence with Brown Creek	+270	Unincorporated Areas of Anson County.
	Approximately 0.6 mile upstream of Lower White Store Road (State Road 1252).	+302	
Lacey Branch	At German Hill Road (State Road 1404)	+377	Unincorporated Areas of Anson County.
	Approximately 200 feet upstream of Pulpwood Yard Road (State Road 1401).	+446	
Lampley Branch	At the confluence with North Fork Jones Creek	+285	Unincorporated Areas of Anson County, Town of Wadesboro.
	Approximately 0.9 mile upstream of Burns Street (State Road 1401).	+429	
Lanes Creek	At the confluence with Rocky River	+248	Unincorporated Areas of Anson County, Town of Peachland.
	Approximately 1.5 miles upstream of confluence of Beaverdam Creek.	+416	
Lanes Creek Tributary 1	At the confluence with Lanes Creek	+248	Unincorporated Areas of Anson County.
	Approximately 0.6 mile upstream of the confluence with Lanes Creek.	+249	
Lanes Creek Tributary 2	At the confluence with Lanes Creek	+248	Unincorporated Areas of Anson County.
	Approximately 0.5 mile upstream of the confluence with Lanes Creek.	+275	
Lanes Creek Tributary 3	At the confluence with Lanes Creek	+256	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of the confluence with Lanes Creek.	+264	
Lanes Creek Tributary 4	At the confluence with Lanes Creek	+315	Unincorporated Areas of Anson County.
	Approximately 1,880 feet upstream of the confluence with Lanes Creek.	+328	
Lanes Creek Tributary 5	At the confluence with Lanes Creek	+340	Unincorporated Areas of Anson County.
	Approximately 1,400 feet upstream of the confluence with Lanes Creek.	+354	
Ledbetter Branch	At the confluence with Brown Creek	+255	Unincorporated Areas of Anson County, Town of Polkton.
	Approximately 510 feet upstream of West Polk Street (State Road 1121).	+298	
Ledbetter Branch Tributary 1	At the confluence with Ledbetter Branch	+284	Town of Polkton.
	Approximately 570 feet upstream of West Polk Street (State Road 1121).	+309	
Leggett Branch	At the confluence with Little Brown Creek	+308	Unincorporated Areas of Anson County.
	Approximately 860 feet upstream of White Store Road (State Road 1121).	+335	
Lick Creek	At the confluence with Brown Creek	+271	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of Lowery Road (State Road 1244).	+314	
Little Brown Creek	At the confluence with Brown Creek	+251	Unincorporated Areas of Anson County, Town of Polkton.
	Approximately 340 feet downstream of White Store Road (State Road 1228).	+330	
Little Creek	At the confluence with Pee Dee River	+129	Unincorporated Areas of Anson County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 100 feet downstream of Pit Road (State Road 1801).	+165	
Little Creek North	At the confluence with Rocky River	+246	Unincorporated Areas of Anson County.
	Approximately 400 feet upstream of Little Creek Road (State Road 1619).	+284	
Little Creek Tributary 1	At the confluence with Little Creek	+130	Unincorporated Areas of Anson County.
	Approximately 1.1 miles upstream of the confluence with Little Creek.	+163	
Little Cribs Creek	At the confluence with Cribs Creek	+323	Unincorporated Areas of Anson County.
	Approximately 0.5 mile upstream of the confluence with Cribs Creek.	+337	
Maness Branch	At the confluence with Caudle Branch and Blackwell Branch	+424	Unincorporated Areas of Anson County.
	Approximately 0.3 mile upstream of Old Plank Road (State Road 1421).	+440	
McCoy Creek	At the confluence with Pee Dee River	+149	Unincorporated Areas of Anson County.
	Approximately 650 feet downstream of Blewett Falls Road (State Road 1745).	+180	
Mill Creek	At the confluence with Pee Dee River	+123	Unincorporated Areas of Anson County.
	Approximately 0.6 mile upstream of US Highway 52	+253	
Mill Creek Tributary 1	At the confluence with Mill Creek	+241	Unincorporated Areas of Anson County, Town of Morven
	Approximately 230 feet upstream of South White Oak Street	+364	
North Fork	At the confluence with Lampley Branch	+386	Town of Wadesboro.
	Approximately 550 feet downstream of NC 109 Highway South.	+411	
North Fork Jones Creek	At the confluence with Jones Creek and South Fork Jones Creek.	+230	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of NC 742 Highway South	+323	
North Fork Jones Creek Tributary 1.	At the confluence with North Fork Jones Creek	+296	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of the confluence with North Fork Jones Creek.	+360	
North Fork Smith Creek	At the confluence with Smith Creek	+189	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of Dr. Sorrell Road (State Road 1741).	+214	
Palmetto Branch	At the confluence with Brown Creek	+216	Unincorporated Areas of Anson County.
	Approximately 0.5 mile upstream of Railroad	+248	
Pee Dee River	Just downstream of the confluence with Whortenberry Creek	+109	Unincorporated Areas of Anson County.
	At the confluence with Rocky River	+220	
Pee Dee River Tributary 1	At the confluence with Pee Dee River	+134	Unincorporated Areas of Anson County.
	Approximately 0.8 mile upstream of the confluence with Pee Dee River.	+147	
Pee Dee River Tributary 2	At the confluence with Pee Dee River	+146	Unincorporated Areas of Anson County.
	Approximately 1.0 mile upstream of the confluence with Pee Dee River.	+171	
Pee Dee River Tributary 3	At the confluence with Pee Dee River	+194	Unincorporated Areas of Anson County.
	Approximately 2.8 miles upstream of the confluence with Pee Dee River.	+223	
Pee Dee River Tributary 4	At the confluence with Pee Dee River	+201	Unincorporated Areas of Anson County.
	Approximately 200 feet downstream of Stanback Ferry Road (State Road 1703).	+213	
Pinch Gut Creek	At the confluence with Brown Creek	+245	Unincorporated Areas of Anson County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 1.0 mile upstream of the confluence of Pinch Gut Creek Tributary 2.	+293	
Pinch Gut Creek Tributary 1 ...	At the confluence with Pinch Gut Creek	+245	Unincorporated Areas of Anson County.
	Approximately 1.0 mile upstream of the confluence with Pinch Gut Creek.	+257	
Pinch Gut Creek Tributary 2 ...	At the confluence with Pinch Gut Creek	+270	Unincorporated Areas of Anson County.
	Approximately 0.5 mile upstream of the confluence with Pinch Gut Creek.	+281	
Pressley Creek	At the confluence with Pee Dee River	+217	Unincorporated Areas of Anson County.
	Approximately 1,450 feet upstream of Pinkston River Road (State Road 1627).	+223	
Pressley Creek Tributary 1	At the confluence with Pressley Creek	+217	Unincorporated Areas of Anson County.
	Approximately 570 feet upstream of Pinkston River Road (State Road 1627).	+224	
Reeder Branch	At the confluence with Pee Dee River	+190	Unincorporated Areas of Anson County.
	Approximately 1.7 miles upstream of the confluence with Pee Dee River.	+220	
Reedy Fork	At the confluence with Bailey Creek and Brush Fork	+282	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of West Wall Street (State Road 1730).	+317	
Rhoddy Creek	At the confluence with Deadfall Creek	+247	Unincorporated Areas of Anson County.
	Approximately 1.0 mile upstream of the confluence with Deadfall Creek.	+270	
Richardson Creek	At the confluence with Rocky River	+259	Unincorporated Areas of Anson County.
	Approximately 0.5 mile upstream of Blonnie Ross Road (State Road 1459).	+295	
Rocky Branch	At the confluence with Lanes Creek	+346	Unincorporated Areas of Anson County.
	Approximately 1,440 feet upstream of the confluence with Lanes Creek.	+357	
Rocky River	At the confluence with Pee Dee River	+220	Unincorporated Areas of Anson County.
	At the Anson/Union County boundary	+302	
Rocky River Tributary 13	At the confluence with Rocky River	+250	Unincorporated Areas of Anson County.
	Approximately 0.6 mile upstream of the confluence with Rocky River.	+277	
Rocky River Tributary 2	At the confluence with Rocky River	+235	Unincorporated Areas of Anson County.
	Approximately 0.6 mile upstream of the confluence with Rocky River.	+237	
Savannah Branch	At the North Carolina/South Carolina State boundary	+331	Unincorporated Areas of Anson County.
	Approximately 0.4 mile upstream of the North Carolina/South Carolina State boundary.	+336	
Savannah Creek	At the confluence with Pee Dee River	+195	Unincorporated Areas of Anson County.
	Approximately 1.6 miles upstream of Mills Peach Orchard Road (State Road 1742).	+293	
Savannah Creek Tributary 1 ...	At the confluence with Savannah Creek	+208	Unincorporated Areas of Anson County.
	Approximately 1,690 feet upstream of the confluence of Savannah Creek Tributary 1A.	+217	
Savannah Creek Tributary 1A	At the confluence with Savannah Creek Tributary 1	+211	Unincorporated Areas of Anson County.
	Approximately 1,680 feet upstream of the confluence with Savannah Creek Tributary 1.	+219	
Savannah Creek Tributary 2 ...	At the confluence with Savannah Creek	+222	Unincorporated Areas of Anson County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 0.4 mile upstream of the confluence with Savannah Creek.	+231	
Shaw Creek	At the confluence with Deadfall Creek	+281	Unincorporated Areas of Anson County.
	Approximately 500 feet downstream of Union Church Road (State Road 1003).	+324	
Smith Creek	At the confluence with Pee Dee River	+189	Unincorporated Areas of Anson County.
	Approximately 2.4 miles upstream of the confluence of North Fork Smith Creek.	+264	
South Fork Jones Creek	At the confluence with Jones Creek and North Fork Jones Creek.	+230	Unincorporated Areas of Anson County.
	Approximately 1,350 feet upstream of NC 742 Highway South.	+318	
Swans Branch	At the confluence with Brown Creek	+255	Unincorporated Areas of Anson County.
	Approximately 1.2 miles upstream of the confluence of Swans Branch Tributary 1.	+293	
Swans Branch Tributary 1	At the confluence with Swans Branch	+267	Unincorporated Areas of Anson County.
	Approximately 550 feet upstream of U.S. 74 Highway West	+280	
Thompson Creek	At the downstream North Carolina/South Carolina State boundary.	+244	Unincorporated Areas of Anson County.
	At the upstream North Carolina/South Carolina State boundary.	+260	
Turkey Top Creek	At the confluence with Pee Dee River	+205	Unincorporated Areas of Anson County.
	Approximately 1,170 feet downstream of Stanback Ferry Road (State Road 1703).	+220	
Turkey Top Creek Tributary 1	At the confluence with Turkey Top Creek	+205	Unincorporated Areas of Anson County.
	Approximately 1,250 feet upstream of Stanback Ferry Road (State Road 1703).	+219	
Turkey Top Creek Tributary 2	At the confluence with Turkey Top Creek	+208	Unincorporated Areas of Anson County.
	Approximately 1,140 feet upstream of Stanback Ferry Road (State Road 1703).	+224	
Whortenberry Creek	At the confluence with Pee Dee River	+110	Unincorporated Areas of Anson County.
	Approximately 1,270 feet upstream of Sneedsboro Road (State Road 1829).	+139	
Wide Mouth Branch	Approximately 0.5 mile upstream of the confluence with Lanes Creek.	+395	Unincorporated Areas of Anson County.
	At the Anson/Union County boundary	+406	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Ansonville
Maps are available for inspection at the Ansonville Town Hall, 8778 U.S. Highway 52, Ansonville, North Carolina.
Town of Morven
Maps are available for inspection at the Morven Town Hall, 301 East Main Street, Morven, North Carolina.
Town of Peachland
Maps are available for inspection at the Peachland Town Hall, 25 West Passaic Street, Peachland, North Carolina.
Town of Polkton
Maps are available for inspection at the Polkton Town Hall, 35 West Polk Street, Polkton, North Carolina.
Town of Wadesboro
Maps are available for inspection at the Wadesboro Town Hall, 124–126 East Wade Street, Wadesboro, North Carolina.
Unincorporated Areas of Anson County
Maps are available for inspection at the Anson County Inspections and Permitting Department, 107 East Ashe Street, Wadesboro, North Carolina.

Lorain County, Ohio and Incorporated Areas
Docket No.: FEMA–B–7711

Battenhouse Ditch	Approximately 115 feet downstream of Middle Ridge Road	+714	Lorain County (Unincorporated Areas).
	Albrecht Road	+783	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Beaver Creek	Approximately 40 feet downstream of State Route 113	+752	Village of South Amherst.
	Approximately 1,000 feet upstream of Garfield Road	+799	Lorain County (Unincorporated Areas).
Brighton-Camden Main Ditch	Approximately 600 feet upstream of confluence with East Fork Vermilion River.	+871	Lorain County (Unincorporated Areas).
	State Route 18	+922	
Carpenter Ditch	Approximately 390 feet downstream of Avon Belden Road	+772	Lorain County (Unincorporated Areas).
	Approximately 90 feet upstream of Reed Road	+786	
East Branch Beaver Creek	Northern City of Amherst corporate limits with the City of Lorain.	+591	City of Amherst.
	Eastern City of Amherst Corporate Limits with the City of Lorain.	+593	
Engle Ditch	Confluence with Battenhouse Ditch	+729	Lorain County (Unincorporated Areas).
	Stang Road	+742	
Fortune Ditch	Approximately 200 feet upstream of confluence with Willow Creek.	+757	City of North Ridgeville, Lorain County (Unincorporated Areas).
	Approximately 2,600 feet upstream of Avon Belden Road	+774	
Gable Ditch	Approximately 400 feet upstream of the mouth at Lake Erie	+585	City of Avon Lake.
	Approximately 40 feet downstream of Walker Road	+625	
Heider Ditch	Approximately 80 feet upstream of Lake Road	+582	City of Avon Lake.
	Approximately 50 feet downstream of Walker Road	+622	
	Norfolk and Southern Railroad	+631	
Heider Ditch Tributary No. 1	Confluence with Heider Ditch	+620	City of Avon Lake.
	Norfolk and Southern Railroad	+628	
Lake Erie	Entire Lake Erie coastline from the western City of Avon Lake corporate limits to the confluence of Heider Ditch (USACE Reach S).	+576	City of Avon Lake.
	Entire Lake Erie coastline from the confluence of Heider Ditch to the eastern City of Avon Lake corporate limits (USACE Reach R).	+576	
	Entire Lake Erie coastline from the western City of Sheffield Lake corporate limits to the eastern City of Sheffield Lake corporate limits (USACE Reach S).	+576	
	Entire Lake Erie coastline from the confluence of Black River to the eastern City of Lorain corporate limits (USACE Reach S).	+576	
	Entire Lake Erie coastline from the western City of Vermilion corporate limits to eastern corporate limits (USACE Reach T).	+577	
Martins Run	Mouth at Lake Erie	+576	City of Lorain.
	City of Lorain corporate limits	+721	
Phelom Ditch	Approximately 160 feet upstream of confluence with Carpenter Ditch.	+777	City of North Ridgeville, Lorain County (Unincorporated Areas).
	Approximately 1,200 feet upstream of the City of North Ridgeville corporate limits.	+787	
Plum Creek	Approximately 80 feet downstream of Pyle-South Amherst Road.	+810	City of Oberlin, Lorain County (Unincorporated Areas).
	US Route 20	+830	
Plum Creek—East	Sprague Road	+782	Lorain County (Unincorporated Areas).
	Crocker Road	+826	
Powdermaker Ditch	Approximately 1,220 feet upstream of the culvert entrance at Lake Road.	+598	City of Avon Lake.
	Approximately 2,320 feet upstream of the culvert entrance at Lake Road.	+602	
Ridgeway Ditch	Approximately 50 feet downstream of Case Road	+696	City of North Ridgeville.
	Approximately 50 feet downstream of Bender Road	+739	
Schroeder Ditch	Approximately 100 feet downstream of State Route 20	+738	Lorain County (Unincorporated Areas).
	Approximately 4,100 feet upstream of Russia Road	+779	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected

ADDRESSES

City of Amherst
Maps are available for inspection at 480 Park Avenue, Amherst, OH 44001.
City of Avon
Maps are available for inspection at 36080 Chester Road, Avon, OH 44011.
City of Avon Lake
Maps are available for inspection at City Hall, 150 Avon Belden Road, Avon Lake, OH 44012.
City of Elyria
Maps are available for inspection at 131 Court Street, Elyria, OH 44035.
Village of Grafton
Maps are available for inspection at 960 Main Street, Grafton, OH 44044.
Village of Kipton
Maps are available for inspection at 299 State Street, Kipton, OH 44049.
Town of La Grange
Maps are available for inspection at 355 South Center Street, LaGrange, OH 44050.
City of Lorain
Maps are available for inspection at Engineering Department, 4th Floor, 200 West Erie Avenue, Lorain, OH 44052.
City of North Ridgeville
Maps are available for inspection at 7307 Avon Belden Road, North Ridgeville, OH 44039.
City of Oberlin
Maps are available for inspection at 85 South Main Street, Oberlin, OH 44074.
Village of Rochester
Maps are available for inspection at 100 South Street, Rochester, OH 44090.
Village of Sheffield
Maps are available for inspection at 4480 Colorado Avenue, Sheffield Village, OH 44054.
City of Sheffield Lake
Maps are available for inspection at 4750 Richelieu Avenue, Sheffield Lake, OH 44054.
Village of South Amherst
Maps are available for inspection at 103 West Main Street, South Amherst, OH 44001.
City of Vermilion
Maps are available for inspection at 5511 Liberty Avenue, Vermilion, OH 44089.
Village of Wellington
Maps are available for inspection at 115 Willard Memorial Square, Wellington, OH 44090.

Lorain County (Unincorporated Areas)
Maps are available for inspection at 226 Middle Avenue, Community Development Department, Elyria, OH 44035.

Columbia County, Pennsylvania, and Incorporated Areas
Docket No.: FEMA–B–7700

Briar Creek	Approximately 130 feet downstream of U.S. Route 11 (West Front Street).	+492	Borough of Briar Creek.
	Approximately 2350 feet downstream of U.S. Route 11 (West Front Street).	+492	
Catawissa Creek	Approximately at 1100 feet downstream of Second Street	+476	Borough of Catawissa.
	Approximately 200 feet upstream of Numidia Drive	+476	
Fishing Creek	Approximately 2180 feet downstream of Covered Bridge No. 56.	+479	Town of Bloomsburg, Township of Montour.
	Approximately 2800 feet upstream of Red Mill Road	+480	
Hemlock Creek	Approximately 650 feet downstream of Legislative Route 19010 (Perry Avenue).	+479	Township of Hemlock, Township of Montour.
	Approximately at 510 feet upstream of Legislative Route 19100 (Perry Avenue).	+480	
Kinney Run	Approximately at 900 feet downstream of the confluence with Tributary No. 1 to Kinney Run, at Scott Township corporate limit.	+481	Township of Scott.
	Approximately at 250 feet upstream of the confluence with Tributary No. 2 to Kinney Run.	+481	
Roaring Creek	Approximately 1320 feet downstream of Legislative Route 19011 (Mount Zion Rd.).	+470	Township of Franklin.
	Approximately 1020 feet upstream of Legislative Route 19011 (Mount Zion Rd.).	+470	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Susquehanna River	Approximately 3.5 miles downstream of Rupert Drive	+470	Borough of Berwick, Borough of Briar Creek, Borough of Catawissa, Town of Bloomsburg, Township of Catawissa, Township of Franklin, Township of Main, Township of Mifflin, Township of Montour, Township of Scott, Township of South Centre.
	Approximately 1200 feet upstream of Route 93	+500	
Tributary No. 1 to Catawissa Creek.	Approximately 240 feet downstream of State Route 42	+476	Borough of Catawissa.
	Approximately 85 feet downstream of State Route 42	+476	
Tributary No. 1 to Kinney Run	Approximately 1530 feet downstream of U.S. Route 11 (New Berwick HWY).	+481	Township of Scott.
	Approximately 638 feet downstream of U.S. Route 11 (New Berwick HWY).	+481	
Tributary No. 10 to Susquehanna River.	Approximately 450 feet downstream of Old Berwick Road	+483	Township of Scott.
	Approximately 590 feet upstream of Tractor Road	+483	
Tributary No. 11 to Susquehanna River.	Approximately 960 feet downstream of Old Berwick Road	+485	Township of South Centre.
	Just upstream of Old Berwick Road	+485	
Tributary No. 12 to Susquehanna River.	Approximately 1508 feet downstream of Legislative Route 19117 (Old Berwick Road).	+487	Township of South Centre.
	Approximately 1130 feet downstream of Legislative Route 19117 (Old Berwick Road).	+487	
Tributary No. 13 to Susquehanna.	Approximately 980 feet downstream of State Road 339	+489	Township of Mifflin.
	Approximately 600 feet downstream of State Road 339	+489	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Borough of Berwick
Maps are available for inspection at 344 Market Street, Berwick, PA 18603.
Borough of Briar Creek
Maps are available for inspection at 6029 Park Road, Berwick, PA 18603.
Borough of Catawissa
Maps are available for inspection at 307 Main Street, Catawissa, PA 17820.
Township of Hemlock
Maps are available for inspection at 26 Firehall Road, Bloomsburg, PA 17815.
Town of Bloomsburg
Maps are available for inspection at 301 East Second Street, Bloomsburg, PA 17815.
Township of Catawissa
Maps are available for inspection at 153 Old Reading Road, Catawissa, PA 17820.
Township of Franklin
Maps are available for inspection at 277 Long Woods Road, Catawissa, PA 17820.
Township of Main
Maps are available for inspection at 345 Church Road, Bloomsburg, PA 17815.
Township of Mifflin
Maps are available for inspection at P.O. Box 359, Mifflinville, PA 18631.
Township of Montour
Maps are available for inspection at 195 Rupert Drive, Bloomsburg, PA 17815.

Moody County, South Dakota, and Incorporated Areas
Docket Nos.: FEMA–B–7734 & D–7818

Big Sioux River	Just upstream of County Highway 32	+1532	Unincorporated Areas of Moody County, City of Flandreau.
	2500 feet upstream of First Avenue	+1543	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected

ADDRESSES

City of Flandreau
Maps are available for inspection at 1005 W. Elm Avenue, Planning and Zoning Department, Flandreau, SD 57028.

Unincorporated Areas of Moody County
Maps are available for inspection at 101 E. Pipestone Avenue, Suite E, Flandreau, SD 57028.

Burnett County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–7704

Austin Lake	Austin Lake	+966	Burnett County (Unincorporated Areas).
Big Doctor Lake	Big Doctor Lake	+987	Village of Siren, Burnett County (Unincorporated Areas).
Big McKenzie Lake	Big McKenzie Lake	+990	Burnett County (Unincorporated Areas).
Birch Island Lake	Birch Island Lake	+995	Burnett County (Unincorporated Areas).
Clam Lake Flowage	Clam Lake Flowage	+905	Burnett County (Unincorporated Areas).
Danbury Flowage	Danbury Flowage	+932	Burnett County (Unincorporated Areas).
Devils Lake	Devils Lake	+965	Burnett County (Unincorporated Areas).
Dunham Lake	Dunham Lake	+978	Burnett County (Unincorporated Areas).
Lily Lake	Lily Lake	+996	Burnett County (Unincorporated Areas).
Little Yellow Lake	Little Yellow Lake	+933	Burnett County (Unincorporated Areas).
Long Lake (T38NR16WS16)	Long Lake (T38NR16WS16)	+962	Burnett County (Unincorporated Areas).
Lower Clam Lake	Lower Clam Lake	+956	Burnett County (Unincorporated Areas).
Lost Lake #1	Lost Lake #1	+993	Burnett County (Unincorporated Areas).
Lost Lake #2, #3, #4	Lost Lake #2, #3, #4	+992	Burnett County (Unincorporated Areas).
Middle McKenzie Lake	Middle McKenzie Lake	+989	Burnett County (Unincorporated Areas).
Mud Lake	Mud Lake	+965	Burnett County (Unincorporated Areas).
Nickaboyne Lake	Nickaboyne Lake	+994	Burnett County (Unincorporated Areas).
Tabor Lake	Tabor Lake	+942	Burnett County (Unincorporated Areas).
Webb Lake	Webb Lake	+941	Burnett County (Unincorporated Areas).
Wood River	Approximately 950 feet downstream of Cross Town Road	+915	Burnett County (Unincorporated Areas).
	Downstream of County Highway Y	+918	
Yellow Lake	Yellow Lake	+933	Burnett County (Unincorporated Areas).
Yellow River	At confluence with the St. Croix River	+873	Village of Webster, Burnett County (Unincorporated Areas).
	Approximately 820 feet upstream of Yellow River Road	+999	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Burnett County (Unincorporated Areas)
Maps are available for inspection at Burnett County Department of Planning and Zoning, 7410 Co Rd K, Siren, WI 54872.
Village of Siren
Maps are available for inspection at Village Hall, 24049 1st Ave. N., Siren, WI 54872.
Village of Webster
Maps are available for inspection at Village Hall, 7505 Main St., Webster, WI 54893.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Rock County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–7705			
Allen Creek	170 feet downstream of Highway 213/59	*871	City of Evansville, Rock County (Unincorporated Areas).
	At Lake Leota Dam	*903	
Bass Creek	At Highway 11	*801	Village of Footville, Rock County (Unincorporated Areas).
	At W. Dorner Road	*814	
Blackhawk Creek	Upstream face of Highway 14 bridge	*838	Rock County (Unincorporated Areas).
	500 feet upstream of S. Milton Shopiere Rd	*877	
East Fork Raccoon Creek	1 mile downstream from W. Saint Lawrence Ave	*746	Rock County (Unincorporated Areas).
	W. Spring Creek Rd	*770	
Fisher Creek	At mouth at Rock River	*761	City of Janesville, Rock County (Unincorporated Areas).
	2100 feet upstream of N. Little Rd	*969	
Greenbelt Tributary 1	At mouth at Blackhawk Creek	*808	City of Janesville.
	Just downstream of Sandhill Dr	*878	
Greenbelt Tributary 2	At mouth at Greenbelt Tributary 4	*851	City of Janesville, Rock County (Unincorporated Areas).
	470 feet upstream of E. Milwaukee St	*873	
Greenbelt Tributary 3	At mouth at Greenbelt Tributary 1	*834	City of Janesville, Rock County (Unincorporated Areas).
	½ mile upstream of Saratoga Dr	*877	
Greenbelt Tributary 4	At mouth at Greenbelt Tributary 1	*828	City of Janesville, Rock County (Unincorporated Areas).
	350 feet upstream of County Highway A	*880	
Greenbelt Tributary 5	At mouth at Greenbelt Tributary 4	*829	City of Janesville, Rock County (Unincorporated Areas).
	600 feet upstream of Highway 14	*882	
Markham Creek	At mouth at Rock River	*760	City of Janesville, Rock County (Unincorporated Areas).
	2100 feet upstream of W. Hanover Rd	*819	
Morningside Tributary	At mouth at Spring Brook-Janesville	*808	City of Janesville.
	Just downstream of Humes Rd	*877	
Raccoon Creek	1 mile downstream from W. Saint Lawrence Ave	*742	Rock County (Unincorporated Areas).
	Just upstream of Highway 81	*773	
Rock River	State line 70 feet downstream of Shirland Ave	*738	City of Janesville, City of Beloit, Rock County (Unincorporated Areas).
	At Lake Koshkonong	*785	
Saunders Creek	At mouth at Rock River	*783	City of Edgerton, Rock County (Unincorporated Areas).
	At County Boundary approx. 1¾ miles upstream of pedestrian bridge at Chamberlain and Blaine St.	*822	
Spring Brook-Beloit	At mouth at Turtle Creek	*764	City of Beloit, Rock County (Unincorporated Areas).
	60 feet upstream of Clinton Corners Rd	*917	
Unnamed Tributary 1 to Raccoon Creek.	At mouth at Raccoon Creek	*761	Rock County (Unincorporated Areas).
	W. Beloit Newark Rd	*804	
Unnamed Tributary 2 to Raccoon Creek.	Mouth at Unnamed Tributary 1 to Raccoon Creek	*763	Rock County (Unincorporated Areas).
	W. Beloit Newark Rd	*827	
Unnamed Tributary 1 to Rock River.	At mouth at Rock River	*754	Rock County (Unincorporated Areas).
	At County Highway G	*780	
Unnamed Tributary to Blackhawk Creek.	At mouth at Blackhawk Creek	*860	Rock County (Unincorporated Areas).
	Just downstream of N. Tarrant Rd	*887	
Unnamed Tributary to E. Fork Raccoon Creek.	At mouth at East Fork Raccoon Creek	*754	Rock County (Unincorporated Areas).
	300 feet upstream of County Highway Q	*818	
Unnamed Tributary in Turtle Township.	1.4 miles downstream from Highway 67 bridge	*791	Rock County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	400 feet downstream from Clinton Corners Rd	*920	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Rock County (Unincorporated Areas)
Maps are available for inspection at Rock County Department of Planning Development, 51 South Main Street, Janesville, WI 53545.
City of Beloit
Maps are available for inspection at Engineering Department, 100 State St., Beloit, WI 53511.
City of Edgerton
Maps are available for inspection at City Hall, 12 Albion St., Edgerton, WI 53534.
City of Evansville
Maps are available for inspection at City Hall, 31 South Madison St., Evansville, WI 53536.
City of Janesville
Maps are available for inspection at City Hall, 18 N. Jackson St., Janesville, WI 53547–5005.
Village of Footville
Maps are available for inspection at Village Hall, 156 Depot St., Footville, WI 53537.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: February 26, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–4626 Filed 3–7–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XG17

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by trawl catcher vessels in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2008 Pacific cod allowable catch (TAC) specified for trawl catcher vessels in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 6, 2008, though 1200 hrs, A.l.t., April 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 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 A season allowance of the 2008 Pacific cod TAC allocated to trawl catcher vessels in the BSAI is 24,932 metric tons as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008). See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2008 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 24,782 mt, and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by trawl catcher vessels 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 Pacific cod by trawl catcher vessels 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 March 4, 2008.

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

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

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

Dated: March 4, 2008.

Emily H. Menashes

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

[FR Doc. 08–991 Filed 3–5–08; 2:29 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 47
Monday, March 10, 2008

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participants' Choices of TSP Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) proposes to amend its interfund transfer regulations to limit the number of interfund transfer requests to two per month. After a participant has made two interfund transfers in a calendar month, the participant may make additional interfund transfers only into the Government Securities Investment (G) Fund until the first day of the next calendar month.

DATES: Comments must be received on or before April 9, 2008. Comments submitted in response to the interim regulation need not be resubmitted; they will be considered as part of this rulemaking process.

ADDRESSES: Comments may be sent to Thomas K. Emswiler, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Agency's Fax number is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Megan Graziano on (202) 942–1644.

SUPPLEMENTARY INFORMATION: The Thrift Savings Plan (TSP) was established by the Federal Employees' Retirement System Act of 1986 (FERSA). FERSA created a new retirement program for Federal employees which consists of a reduced defined benefit plan component supplemented by a defined contribution retirement savings and investment program commonly known as the TSP.

Statutory Basis and History of TSP Interfund Transfers

After three years of study, the Congress determined that the TSP would be a passive, long-term investment vehicle. This approach is consistently reflected throughout the legislative history of the enabling legislation. The statute requires two opportunities each year for participants to transfer their investments among the TSP investment funds. 5 U.S.C. 8438(d). Additional opportunities may be provided under regulations issued by the Executive Director.

This ''interfund transfer'' (IFT) program was first implemented in 1988 under regulations which coupled two annual IFT opportunities with the then-statutory twice-a-year contribution open seasons. The March 1989 booklet entitled *Summary of the Thrift Savings Plan for Federal Employees* introduced participants to the concept of interfund transfers as follows:

> You can transfer funds only twice a year, once in connection with each open season. Please consider this before you decide on the allocation of your contributions among the Funds. Your Plan contributions are invested for your retirement, and you should make your investment decision with this long-term goal in mind.

This long-term investment strategy (as opposed to a short-term strategy of market-timing) remains an essential element of the TSP. The April 2007 TSP Fund Information sheets recommend a ''buy and hold'' strategy with periodic—as opposed to frequent—rebalancing.

The enactment of legislation removing restrictions on TSP investments led to the first Agency review of the TSP interfund transfer policy. Until 1990, employees covered by the Federal Employees' Retirement System (FERS) were allowed to invest only a percentage of their own contributions outside the Government Securities Investment (G) Fund. All employer contributions and all contributions by employees covered by the Civil Service Retirement System could, by law, be invested only in the G Fund.

The Agency asked Congress to ease these restrictions in order to simplify program administration. Congress ended the restrictions as part of the Thrift Savings Plan Technical Amendments of 1990. Going forward, all participants were to be allowed to invest or reinvest in any TSP fund. In preparing for implementation, the Agency reexamined the policy of two-a-year interfund transfers during open seasons due to the anticipated growth in the volume of IFTs.

In conducting this review, the Executive Director identified four considerations:

—The practices of other plans;
—administrative/operational concerns;
—costs; and
—service to participants.

The Executive Director recommended that the Agency's Board members approve de-linking IFTs from open seasons and allow up to four transfers a year. These transfers were linked to the TSP's then monthly valuation cycle, thus allowing a transfer in any month up to four times a year. This policy was based on the following findings: Other plans were liberalizing allowable IFTs; IFT request processing would be spread over more months, eliminating operational bottlenecks; trading costs would be reduced by processing smaller trades on twelve days rather than larger trades on two days each year; and, participants who missed an IFT deadline would no longer have to wait six months for another opportunity.

In making his recommendation, the Executive Director cautioned that allowing more frequent transfers simply ''to satisfy the demand of a relatively small group of participants, could result in increases in administrative costs to all participants which would be difficult to justify. I would also be concerned that such a policy would be viewed as encouraging participants to focus on market conditions each month in making their asset allocations. Such a short term focus would not be consistent with the Board's policy of encouraging long term financial planning for retirement.''

Thus, the initial two-a-year IFT regulatory requirement was liberalized, by regulation, but only after careful study and a clear restatement of the fundamental long-term investment policy.

In 1995, the policy was again reconsidered. The goal was to ensure that any participant withdrawing an account balance be permitted to transfer to the G Fund while withdrawal processing was completed.

The 1995 policy review examined the same elements as the 1990 review. The Agency research found that, rather than allow one special withdrawal-based transfer, the trend among defined contribution plans was to allow at least

12 IFTs each year (this also happened to be the greatest number possible under the monthly-valued system then in place at the TSP). By that time, administrative/operational concerns were minimized for the TSP because IFT requests had largely migrated from paper processing to telephone keypad entry. After a thorough review, the Agency expanded IFT opportunities to one-a-month, twelve-a-year in April 1995.

In October 1995, the Agency began designing a new TSP record keeping system. The initial plan anticipated that the new system should accommodate unlimited IFTs and have the capability to levy a charge if it was later determined that charges were necessary or desirable. However, by 1997, it was clear that frequent trading was still not a problem in the TSP. Further action on a design that would assess a charge for frequent trading was discontinued.

A staff review regarding IFTs in 1998 found that the policy adopted in 1995 continued to achieve the intended policy goals. The review found that 91 percent of participants who made IFTs requested one (75 percent) or two (16 percent) during the year. Just 42 participants requested the maximum of 12.

From an administrative/operational perspective, IFT requests were processed without bottlenecks via the ThriftLine (telephone keypad) and were being migrated to an even more efficient processing environment on the new TSP Web site.

From an investment perspective, transfers were netted each month, thus offsetting uncorrelated ''buys'' with ''sells'' before the monthly IFT amounts were forwarded to the asset manager for investment. Further, under Agency contracts, the asset manager executed ''cross trades'' with other institutional investors in its commingled funds, reducing trading costs and minimizing deviations from the indexes tracked by the TSP.

Participants were satisfied with the level of service, which was comparable to what was being offered in private sector plans. Further, allowing 12 unrestricted interfund transfers a year—the maximum possible number under a monthly-valued system—had had no adverse effect on administrative operations or trading costs. Therefore, no restrictions were initially required when the TSP moved from its monthly-valued record keeping system to a daily-valued platform in 2003. This had the effect of increasing interfund transfer opportunities from one per month, executed at month end, to one per business day.

The Agency monitored interfund transfer activity by observing the overall number of transfers and periodically determining whether ''frequent trading'' was becoming a problem. For example, in 2004, the Executive Director requested a check of 2003 data which disclosed 150 participants were requesting frequent IFTs for the apparent purpose of short-term market timing. There was no apparent adverse consequence of this activity on other participants in the TSP.

The Problem

This situation began to change in 2006. As the number of interfund transfers increased and as a small number of participants with relatively large account balances engaged in frequent interfund transfers, a pattern started to emerge. These participants began to focus on the International Index Investment (I) Fund, which tracks the Morgan Stanley Europe, Australasia, and Far East Index. The attraction may have been based on the notion that by the noon Eastern Time deadline for submitting an IFT request, a participant might anticipate whether overseas markets would open up or down. Since an IFT request is processed based on the closing price for the previous day, this was seen as an opportunity for arbitrage. Although ''fair valuation'' was introduced to eliminate the arbitrage potential, some participants, nevertheless, continued this behavior. Moreover, over the past year, this behavior has become more frequent and less random.

This activity disrupts the Agency's carefully designed cost-minimization efforts in three distinct ways: Increased transaction costs (including commissions paid to brokers, transfer taxes, and market impact); increased futures/cash position; and forgone interest.

Market impact, which is impossible to calculate in advance, is a major problem generated by the correlated actions of those individuals attempting to actively manage their TSP investments based on anticipated short-term market movements.

By statutory design, the TSP funds are passive, long-term ''pooled'' investments required to replicate the performance of selected broad index funds. The intent of IFTs is to allow periodic rebalancing. There are many benefits inherent in this arrangement established by the original statute. However, the vast majority of participants who follow this long-term strategy are subjected to greater risk when a determined cohort of participants frequently moves funds in anticipation of market movements.

Simply stated, when this small cohort rapidly removes funds in anticipation of short-term market losses, any losses which in fact materialize are spread over fewer remaining participants and are therefore more severe for those who maintain the long-term approach. Those who rapidly shift out secure the higher value based on the closing price for the day, while the remaining investors bear the losses when the shares are sold at the lower opening price on the following business day.

An extreme example would involve a large, highly-correlated Friday afternoon transfer by market timers wishing to eliminate their exposure in the I Fund based on anticipated market losses due to world events. If those events come to pass, in particular during a three-day U.S. weekend, world markets could fall dramatically, and the smaller number of remaining investors would bear the totality of the losses.

Defenders of this practice argue that the market timers might guess wrong, and, in such a case, positive earnings would be spread over a smaller investor base. They also argue that they are only controlling their own funds.

This rationale, however, ignores the fact that, by their actions, these market timers are exposing passive, long-term investors to a risk they never agreed to accept. These bystanders are simply using the TSP in the passive, long-term method for which it was designed.

Additionally, the market timers are forcing the fund manager to take extraordinary measures to mitigate the adverse impact of an investment behavior for which the TSP was not designed. These extraordinary measures generate costs borne by all participants and adversely affect the plan manager's ability to precisely replicate the performance of the selected indexes.

Frequent rapid fire transfers in the TSP reached a zenith in October, 2007. One example:

—On October 19, $371 million was transferred into the I Fund.
—On October 24, three business days later, $391 million was transferred out of the I Fund.
—;$295 million of those transactions was attributable to 2,018 participants who purchased on 10/19 and redeemed on 10/24.
—323 of these participants transferred $250,000 or more for a total of $110 million on each day.
—In the previous 60 days, these 323 participants had completed 5,804 exchanges of the I Fund for a total dollar amount of $1.9 billion. Two

hundred and seventy-eight of those participants with large accounts went on to repurchase the I Fund two days later on October 26.

—1,656 participants bought the I Fund on October 19, sold it on October 24 and repurchased it on October 26.

Limits Established by Other Funds/Plans

The Agency is not alone in recognizing the problems caused by frequent traders. Indeed, there are supplemental plans offered by some U.S. Government agencies, which have taken measures to reduce interfund transfer activity. The FDIC Savings Plan charges a 2 percent redemption fee on shares of the international stock fund which are not held for at least 90 days. The Thrift Plan for the Employees of the Federal Reserve System does not allow participants to redeem shares of any fund for 14 days after purchase.

Beginning with the ''late trading'' scandal of 2003, the mutual fund industry began to place limits on trading. Trading limits imposed by major mutual fund groups include:

Mutual fund group	Trade limit	Time frame
AIM Funds	4 exchanges	1 calendar year.
Ariel Capital Management	4 round trip exchanges	1 year.
Federated	2 trades	30 days.
Harbor	3 round trips (in/out within 30 days)	12 months.
Hotchkiss and Wiley	1 round trip	12 month period.
ING	4 trades	360 days.
Janus	4 round trips	12 months (may reject even before this limit is reached.)
Neuberger and Berman	1 trade	60 days.
Northern	2 trades	90 days.
PBHG	4 trades	360 days.
Royce	1 trade	30 days.
Van Eck	6 trades	360 days.
Vanguard	After sale cannot repurchase	60 days.

Defined contribution plans which offer mutual funds as their investment choices can pass on the funds' restrictions or impose more stringent restrictions of their own. The Hewitt survey entitled *Trends and Experience in the 401(k) Plans 2007* found that 73 percent of surveyed plans have placed restrictions on some or all of their funds.

While the Securities and Exchange Commission (SEC) has no direct oversight authority with respect to the TSP, its views on frequent trading and specifically its directive to mutual fund board members is instructive.

The SEC's rule 22c–2(a)(1) under the Investment Company Act of 1940, which authorizes mutual funds to impose redemption fees when it is determined that such fees are in a fund's best interest, took effect in October 2006. In the release adopting this rule (Inv. Co. Ac Rel. No. IC–26782, March 11, 2005), the SEC noted, ''Excessive trading in mutual funds occurs at the expense of long-term investors, diluting the value of their shares. It may disrupt the management of a fund's portfolio and raise the fund's transaction costs because the fund manager must either hold extra cash or sell investments at inopportune times to meet redemptions.''

According to the SEC: ''Under the rule [22c–2], the board of directors must either (i) approve a fee of up to 2% of the value of shares redeemed, or (ii) determine that the imposition of a fee is not necessary or appropriate. *Id.* A board, on behalf of the fund, may determine that the imposition of a redemption fee is unnecessary or inappropriate because, for example, the fund is not vulnerable to frequent trading or the nature of the fund makes it unlikely that the fund would be harmed by frequent trading. Indeed, a redemption fee is not the only method available to a fund to address frequent trading in its shares. As we have stated in previous releases, funds have adopted different methods to address frequent trading, including (i) restricting exchange privileges; (ii) limiting the number of trades within a specified period; (iii) delaying the payment of proceeds from redemptions for up to seven days (the maximum delay permitted under section 22(e) of the Act); (iv) satisfying redemption requests in-kind; and (v) identifying market timers and restricting their trading or barring them from the fund.''

In its review of the best practices of the mutual fund industry's efforts to curb frequent trading, the Agency learned that the exact mechanisms funds employ to deter frequent trading are many and varied depending on unique circumstances, but they share two common themes: Fees or transaction limitations.

Many fund families charge redemption fees for shares which are redeemed within 30, 60, or 90 days of purchase. T. Rowe Price, for example, levies fees on 27 funds, including a 2 percent redemption fee on shares of its International Index Fund and a 0.5 percent fee on shares of its Equity Index 500 and Extended Equity Market Index Funds, if they are sold within 90 days of purchase. TIAA–CREF (with $400 billion of assets under management and 3 million participants) charges a redemption fee of 2 percent on shares of its International Equity, International Equity Index, High Yield II, Small-Cap Equity, Small-Cap Growth Index, Small-Cap Value Index or Small-Cap Blend Index Funds redeemed within 60 days of purchase. We noted particularly that the fee is a percentage of the dollar amount transacted, not a flat processing charge.

When brokerage firms charge $10 to execute a stock trade, they know exactly how much it costs them to make that transaction. Mutual fund managers (and the TSP) cannot determine the exact amount of costs to the plan from interfund transfer activity for the following reasons. First, each day, a price for each fund is determined based on closing stock prices for that day. However, the fund manager does not execute every stock trade at that closing price. Any difference is market impact and is charged or credited to the fund, thus impacting the returns of the long-term holders. Second, to accommodate the large trades which result from frequent IFT activity, managers must keep a larger liquidity pool, which causes performance to deviate from that of the index. Lastly, for the TSP, when the liquidity pool is depleted as a result of a number of large trades in a row, cash due to the TSP is not received for

up to three days, costing participants forgone interest. None of those three costs is calculable in advance, and all three are different every single day. Because it is impossible to determine how much to charge for each transaction, mutual fund families assess a percentage of the dollar amount transacted.

Many fund families employ trading restrictions similar to Vanguard's whereby an investor may not repurchase any fund within 60 days after a redemption.

We would also note that both TIAA–CREF and Vanguard, among others, use a double-barreled approach by charging a fee on top of the trading restrictions for some funds. For example, if an investor sells the Vanguard Developed Markets Index Fund (similar to the TSP's I Fund) within 60 days of purchasing it, that investor is charged a 2% fee AND cannot repurchase the fund for 60 days.

Proposed TSP Solution

The hallmark of the TSP is simplicity. Although the problem described above may not be amenable to a single solution (as evidenced by the multi-layered restrictions including monthly limits/no-buyback rules/redemption fees imposed by various private sector funds and plans), the Agency is currently proposing a straightforward rule that will allow two unrestricted transfers each month, followed by unlimited opportunities to transfer amounts to the Government Securities Investment (G) Fund. Our analysis on the effect of such a limitation shows that it would have reduced the historic levels of November 2007 trade dollar volumes by 53%.

In developing its recommendation, the Agency chose not to pursue redemption fees because it is impossible to correctly assign the exact costs to those who are making interfund transfers. Additionally, imposing a percentage fee would deny our participants the ability to go to the safe harbor of the G Fund at any time for no charge. The Agency considers that capability to be of paramount importance. A fee-based system would especially punish an infrequent trader who may wish to redeem within 30, 60, or 90 days (depending on the policy) because the market is declining. In this situation, the participant could face losing two percent of his/her investment in addition to the market decline, a worst case scenario.

Further, our approach is more liberal than most, if not all, of the restrictions reviewed. It allows participants to rebalance up to twice a month. Indeed, our two investment consultants, Mercer and Ennis Knupp, have conducted studies showing that rebalancing an account more than monthly or quarterly is ineffective. We therefore consider our approach to be more accommodating than necessary for optimal rebalancing frequency and demonstrably more liberal than the policies of 40 record keepers which use the same processing system as the TSP.

The advantages of our current approach include ease of understanding by the 3.9 million TSP participants as well as administrative simplicity. In fact, the Agency's proposal will affect a very small number of TSP participants. Our review of 2007 data shows that more than 99% of participants requested 12 or fewer interfund transfers. The Agency expects that, when coupled with our educational and outreach efforts, this structural limit of two per month will virtually eliminate the problems associated with frequent interfund transfer activity.

The Executive Director has sent a letter to every one of the 3.9 million participants explaining the situation and reminding all participants that the TSP was designed by Congress to be a passive, long-term vehicle designed to replicate the selected indexes.

Participants whose frequent transfer requests reflect an effort to time the markets (*i.e.*, those who request interfund transfers in reaction to, or anticipation of, short-term market conditions) might still affect the returns of others in the pooled investments, as well as the Plan's ability to replicate the indexes, through less frequent yet more determined activity. This has the potential to become a significant problem as account balances grow over time. If participants with large account balances request large interfund transfers in a non-random manner, the Agency may reconsider imposing the more restrictive limitations employed by other plans and mutual funds. If additional restrictions prove necessary, the Agency will announce additional rulemaking at a future date.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. It will affect only Thrift Savings Plan participants and beneficiaries. To the extent that limiting interfund transfers is necessary to curb excessive trading, very few, if any, ''small entities,'' as defined in 5 U.S.C. 601(6), will be affected by the final rule. This is because the Thrift Savings Plan is sponsored by the U.S. Government and because the interfund transfer limitations are likely to affect primarily federal employees, members of the uniformed services, and an insubstantial number of financial advisors who may provide advice in connection with the Fund.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the Government Accountability Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects in 5 CFR Part 1601

Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, the Agency proposes to amend 5 CFR chapter VI as follows:

PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS

1. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474 (b)(5) and (c)(1).

2. Amend § 1601.32, by revising paragraph (b) to read as follows:

§ 1601.32 Timing and Posting Dates.

* * * * *

(b) *Limit.* There is no limit on the number of contribution allocation requests. A participant may make two unrestricted interfund transfers (account rebalancings) per account (e.g., civilian or uniformed services), per calendar month. An interfund transfer will count

toward the monthly total on the date posted by the TSP and not on the date requested by a participant. After a participant has made two interfund transfers in a calendar month, the participant may make additional interfund transfers only into the G Fund until the first day of the next calendar month.

[FR Doc. E8–4776 Filed 3–7–08; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2007–0147]

RIN 1625–AA08

Special Local Regulations; Recurring Marine Events in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create special local regulations to regulate recurring marine events in the Fifth Coast Guard District. These regulations would apply to all permitted events listed in the table attached to the regulation, and include events such as regattas, and marine parades. These regulations are being proposed to reduce the Coast Guard's administrative workload and expedite public notification of events.

DATES: Comments and related material must reach the Coast Guard on or before April 9, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–0147 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: *http://www.regulations.gov.*

(2) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand delivery: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, at (757) 398–6204. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2007–0147), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2007–0147) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation currently includes events such as sailing regattas, power boat races, swim races and holiday parades. Currently, there are over 60 annually recurring marine events and many other non-recurring events within the district. In the past, the Coast Guard regulated these events by creating individual special local regulations on a case by case basis. Most of these events required only the establishment of a regulated area and assignment of a patrol commander to ensure safety. Issuing individual, annual special local regulations has created a significant administrative burden on the Coast Guard. From 2005 to 2007 the Coast Guard created over 100 temporary regulations for marine events in the Fifth District. The numbers are expected to rise in 2008 with the growing popularity of water sports activities.

Additionally, for the majority of these events, the Coast Guard does not receive notification of the event, or important details of the event are not finalized by event organizers, with sufficient time to publish a notice of proposed rulemaking and final rule before the event date. The Coast Guard must therefore create

temporary final rules that sometimes are not completed until only days before the event. This results in delayed notification to the public, potentially placing the public and event participants at risk.

This proposed rule would significantly relieve the administrative burden on the Coast Guard, and at the same time allow the sponsor of the event and the Coast Guard to notify the public of these events in a timely manner. The public would be provided with notice of events through the table attached to this regulation. This table lists each recurring event that may be regulated by the Coast Guard, and indicates the sponsor, as well as the date and location of the event. Because the dates and locations of these events may change slightly from year to year, the specific information on each event, including the exact dates, specific areas, and description of the regulated area, would be provided to the public through a Local Notice to Mariners published before the event, as well as through Broadcast Notice to Mariners. This table would also be updated by the Coast Guard periodically to add new recurring events, remove events that no longer occur, and update listed events to ensure accurate information is provided.

Discussion of Proposed Rule

This proposed rule would apply to each event listed in the attached table to this rule. Events listed in the table are events that recur annually in the Fifth Coast Guard District. The table provides the event name and sponsor, as well as an approximate date and location of the event. The specific date and regulated area for each event would be provided in a Local Notice to Mariners and Broadcast Notice to Mariners prior to each event. Some events listed in the table currently have permanent regulations published in 33 CFR part 100, and these regulations would be removed because they no longer occur regularly.

For each event listed in the table, an event patrol, with a Patrol Commander in charge, may be assigned. The Patrol Commander may control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas would be required to immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

Only event sponsors, designated participants, and official patrol vessels would be allowed to enter a regulated area. All persons and vessels not registered with the event sponsor as participants or official patrol vessels are considered spectators. Spectators may not enter the regulated area and may be confined to a designated spectator area to view the event. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators would be required to pass directly through the regulated area at safe speed and without loitering.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The effect of this proposed action merely establishes the dates on which the existing regulations would be enforced and consolidates them within one regulation. It would not impose any additional restrictions on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas where marine events are being held. This proposed regulation will not have a significant impact on a substantial number of small entities because it will only be enforced on marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring. Additionally, in most cases, vessels will be able to safely transit around the regulated area at all times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. We believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. This proposed rule fits the category of paragraph 34(h) because it proposes to create special local regulations for regattas and marine parades.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

2. Revise § 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

The following regulations apply to the marine events listed in Table 1 of this section. These regulations will be effective annually, for the duration of each event listed in Table 1. Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(a) *Definitions.* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander.* A Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector—Captain of the Port to enforce these regulations.

(2) *Official Patrol* means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(b) *Event Patrol.* The Coast Guard may assign an event patrol, as described in § 100.40 of this part, to each regulated event listed in the table. Additionally, a Patrol Commander may be assigned to oversee the patrol. The event patrol and Patrol Commander may be contacted on VHF–FM Channel 16.

(c) *Special Local Regulations.* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) Only event sponsor designated participants and official patrol vessels are allowed to enter the regulated area.

(4) Spectators are only allowed inside the regulated area if they remain within a designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

(d) *Contact Information.* Questions about marine events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the

Port zone, please see subpart 3.25 of this chapter.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4944.

(2) Coast Guard Sector Baltimore—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Atlantic Beach, North Carolina: (252) 247–4545.

(5) Coast Guard Marine Safety Unit Wilmington—Cape Fear River Captain of the Port Zone, Wilmington, North Carolina: (910) 772–2200.

(e) *Application for Marine Events.* The application requirements of § 100.15 of this part apply to all events listed in Table 1. For information on applying for a marine event, contact the Captain of the Port for the area in which the event will occur, at the phone numbers listed above.

TABLE 1 TO § 100.501.—ALL COORDINATES LISTED IN TABLE 1 REFERENCE DATUM NAD 1983

No.	Date	Event	Sponsor	Location 1
Coast Guard Sector Delaware Bay—COTP Zone				
1	June—1st Sunday	Atlantic County Day at the Bay.	Atlantic County, New Jersey.	The waters of Great Egg Harbor Bay, adjacent to Somers Point, New Jersey, bounded by a line drawn along the following boundaries: the area is bounded to the north by the shoreline along John F. Kennedy Park and Somers Point, New Jersey; bounded to the east by the State Route 52 bridge; bounded to the south by a line that runs along latitude 39°18′00″ N; and bounded to the west by a line that runs along longitude 074°37′00″ W.
2	June—3rd Saturday.	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: latitude 39°36′35.7″ N, longitude 075°35′25.6″ W, to latitude 39°34′57.3″ N, longitude 075°33′23.1″ W, to latitude 39°34′11.9″ N, longitude 075°34′28.6″ W, to latitude 39°35′52.4″ N, longitude 075°36′33.9″ W.
3	July—3rd Sunday	OPA Atlantic City Grand Prix.	Offshore Performance Assn. (OPA).	The waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′50″ N, longitude 074°24′37″ W, to latitude 39°20′40″ N, longitude 074°23′50″ W, thence southwesterly to latitude 39°19′33″ N, longitude 074°26′52″ W, thence northwesterly to a point along the shoreline at latitude 39°20′43″ N, longitude 074°27′40″ W, thence northeasterly along the shoreline to latitude 39°21′50″ N, longitude 074°24′37″ W.
4	July—On or about July 4th.	U.S. holiday celebrations.	City of Philadelphia.	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
5	August—2nd Friday, Saturday and Sunday.	Point Pleasant OPA/NJ Offshore Grand Prix.	Offshore Performance Association (OPA) and New Jersey Offshore Racing Assn.	The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Normandy Beach, NJ at latitude 40°00′00″ N, longitude 074°03′30″ W, thence easterly to latitude 39°59′40″ N, longitude 074°02′00″ W, thence southwesterly to latitude 39°56′35″ N, longitude 074°03′00″ W, thence westerly to a position near the Seaside Heights Pier at latitude 39°56′35″ N, longitude 074°04′15″ W, thence northerly along the shoreline to the point of origin.
6	July—3rd Wednesday and Thursday.	New Jersey Offshore Grand Prix.	Offshore Performance Assn. & New Jersey Offshore Racing Assn.	The waters of the Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all of the navigable waters of the United States from Asbury Park, New Jersey, latitude 40°14′00″ N; southward to Seaside Park, New Jersey latitude 39°55′00″ N, from the New Jersey shoreline seaward to the limits of the Territorial Sea. The race course area extends from Asbury Park to Seaside Park from the shoreline, seaward to a distance of 8.4 nautical miles.
7	August—4th Wednesday.	Thunder Over the Boardwalk Air show.	Atlantic City Chamber of Commerce.	The waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, thence to latitude 39°21′08″ N, longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°25′04″ W.
8	September—3rd Saturday.	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: latitude 39°36′35.7″ N, longitude 075°35′25.6″ W, to latitude 39°34′57.3″ N, longitude 075°33′23.1″ W, to latitude 39°34′11.9″ N, longitude 075°34′28.6″ W, to latitude 39°35′52.4″ N, longitude 075°36′33.9″ W.

TABLE 1 TO § 100.501.—ALL COORDINATES LISTED IN TABLE 1 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location 1
9	September—last Friday, Saturday and Sunday; or October-first Friday, Saturday and Sunday.	Sunset Lake Hydrofest.	Sunset Lake Hydrofest Assn.	All waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N.
10	October—2nd Saturday and Sunday.	The Liberty Grand Prix.	Offshore Performance Assn. (OPA).	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
11	October—1st Monday (Columbus Day).	U.S. holiday celebrations.	City of Philadelphia.	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
12	December—On December 31st (New Year's Eve).	U.S. holiday celebrations.	City of Philadelphia.	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
		Coast Guard Sector Baltimore—COTP Zone		
13	March—4th or last Saturday.	Safety at Sea Seminar.	U.S. Naval Academy.	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.
14	March—last Friday, Saturday and Sunday; April and May—every Friday, Saturday and Sunday.	USNA Crew Races.	U.S. Naval Academy.	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00'54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.
15	April—2nd Saturday.	St. Mary's Seahawk Sprint.	St. Mary's College of Maryland.	All waters of the St. Mary's River, from shoreline to shoreline, bounded to the south by a line at latitude 38°10′05″ N, and bounded to the north by a line at latitude 38°12′00″ N.
16	May—1st Sunday	Nanticoke River Swim and Triathlon.	Nanticoke River Swim and Triathlon, Inc.	All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′00″ N, longitude 075°54′00″ W, thence westerly to latitude 38°18′00″ N, longitude 075°55′00″ W, thence northerly to latitude 38°20′00″ N, longitude 075°53′48″ W, thence easterly to latitude 38°19′42″ N, longitude 075°52′54″ W.
17	May—2nd Saturday and Sunday.	Baltimore County Community Waterfront Festival.	Baltimore County	All waters of Martin Lagoon that are north of a line drawn from latitude 39°19′34″ N, longitude 076°25′41″ W, thence to a position located at 39°19′33″ N, longitude 076°25′33″ W.
18	May—3rd Friday, Saturday and Sunday.	Dragon Boat Races at Thompson Boathouse, Georgetown, Washington, DC.	Dragon Boat Festival, Inc.	The waters of the Upper Potomac River, Washington, DC, from shoreline to shoreline, bounded upstream by the Francis Scott Key Bridge and downstream by the Roosevelt Memorial Bridge.

TABLE 1 TO § 100.501.—ALL COORDINATES LISTED IN TABLE 1 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location 1
19	May—3rd Tuesday and Wednesday.	Blue Angels Air Show.	U.S. Naval Academy.	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.
20	June—2nd Sunday.	The Great Chesapeake Bay Bridges Swim Races and Chesapeake Challenge One Mile Swim.	Great Chesapeake Bay Swim, Inc.	The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00′36″ N, longitude 076°23′05″ W and the eastern shore at latitude 38°59′14″ N, longitude 076°20′00″ W, and 500 yards sough of the south span of the bridge from the western shore at latitude 39°00′16″ N, longitude 076°24′30″ W and the eastern shore at latitude 38°58′38.5″ N, longitude 076°20′06″ W.
21	June—3rd Saturday or July—3rd Saturday.	Maryland Swim for Life.	District of Columbia Aquatics Club.	The waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°10′16″ N, near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12′30″ N by the Maryland S.R. 213 Highway Bridge.
22	June—last Saturday and Sunday.	Bo Bowman Memorial—Sharptown Regatta.	Virginia/Carolina Racing Assn.	All waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32′46″ N, longitude 075°43′14″ W, to latitude 38°32′42″ N, longitude 075°43′09″ W, thence northeasterly to latitude 38°33′04″ N, longitude 075°42′39″ W, thence northwesterly to latitude 38°33′09″ N, longitude 075°42′44″ W, thence southwesterly to latitude 38°32′46″ N, longitude 075°43′14″ W.
23	August—1st Saturday and Sunday.	Thunder on the Narrows.	Kent Narrows Racing Assn.	All waters of Prospect Bay enclosed by the following points: latitude 38°57′52.0″ N, longitude 076°14′48.0″ W, to latitude 38°58′02.0″ N, longitude 076°15′05.0″ W, to latitude 38°57′38.0″ N, longitude 076°15′29.0″ W, to latitude 38°57′28.0″ N, longitude 076°15′23.0″ W, to latitude 38°57′52.0″ N, longitude 076°14′48.0″ W.
24	Labor Day weekend —Saturday and Sunday, or Monday.	Annual Ragin on the River.	Port Deposit, MD, Chamber of Commerce.	The waters of the Susquehanna River, adjacent to Port Deposit, Maryland, from shoreline to shoreline, bounded on the south by the U.S. I–95 fixed highway bridge, and bounded on the north by a line running southwesterly from a point along the shoreline at latitude 39°36′22″ N, longitude 076°07′08″ W, thence to latitude 39°36′00″ N, longitude 076°07′46″ W.
25	September—2nd Saturday.	Dragon Boat Races in the Inner Harbor.	Associated Catholic Charities, Inc.	The waters of the Patapsco River, Baltimore, MD, Inner Harbor from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36′30″ W.
26	September—2nd Sunday.	Annapolis Triathlon Swim.	City of Annapolis and the Annapolis Triathlon Club.	The approaches to Annapolis Harbor, the waters of Spa Creek, and the Severn River, shore to shore, bounded on the south by a line drawn from Carr Point, at latitude 38°58′58.0″ N, longitude 076°27′40.0″ W, thence to Horn Point Warning Light (LLNR 17935), at 38°58′24.0″ N, longitude 076°28′10.0″ W, thence to Horn Point, at 38°58′20.0″ N, longitude 076°28′27.0″ W, and bounded on the north by the State Route 450 Bridge.
27	September—4th or last Saturday and Sunday.	Cambridge Offshore Challenge.	Chesapeake Bay Powerboat Association.	All waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD and Oystershell Point, MD.
28	September—last Saturday.	Chesapeakeman Ultra Triathlon.	Columbia Triathlon Assn. Inc.	All waters of the Choptank River within 200 yards either side of a line drawn northwesterly from a point on the shoreline at latitude 38°33′45″ N, longitude 076°02′38″ W, thence to latitude 38°35′06″ N, longitude 076°04′42″ W, a position located at Great Marsh Park, Cambridge, MD.
29	October—last Saturday or November—1st Saturday.	Tug of War	City of Annapolis	The waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58′36.9″ N, longitude 076°29′03.8″ W on the Annapolis shoreline to a position at latitude 38°58′26.4″ N, longitude 076°28′53.7″ W on the Eastport shoreline.

TABLE 1 TO § 100.501.—ALL COORDINATES LISTED IN TABLE 1 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location 1
30	December—2nd Saturday.	Eastport Yacht Club Boat Parade.	Eastport Yacht Club.	The approaches to Annapolis Harbor, the waters of Spa Creek, and the Severn River, shore to shore, bounded on the south by a line drawn from Carr Point, at latitude 38°58′58.0″ N, longitude 076°27′40.0″ W, thence to Horn Point Warning Light (LLNR 17935), at 38°58′24.0″ N, longitude 076°28′10.0″ W, thence to Horn Point, at 38°58′20.0″ N, longitude 076°28′27.0″ W, and bounded on the north by the State Route 450 Bridge.
Coast Guard Sector Hampton Roads—COTP Zone				
31	March—4th or last Friday and Saturday.	Virginia state hydroplane championships.	Virginia Boat Racing Assn.	All waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′18″ N, longitude 076°23′10″ W, to latitude 36°50′18″ N, longitude 076°21′42″ W, to latitude 36°50′12″ N, longitude 076°21′42″ W, to latitude 36°50′12″ N, longitude 076°23′10″ W, to latitude 36°50′18″ N, longitude 076°23′10″ W.
32	April—3rd Friday and Saturday.	Hydroplane races	Virginia Boat Racing Assn.	All waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′18″ N, longitude 076°23′10″ W, to latitude 36°50′18″ N, longitude 076°21′42″ W, to latitude 36°50′12″ N, longitude 076°21′42″ W, to latitude 36°50′12″ N, longitude 076°23′10″ W, to latitude 36°50′18″ N, longitude 076°23′10″ W.
33	April—4th Friday and Saturday.	Crawford Bay Crew Classic.	Port Events, Inc ..	The waters of the Southern Branch, Elizabeth River from shoreline to shoreline bounded to the south by a line drawn from latitude 36°49′11.0″ N, longitude 076°17′33.0″ W to latitude 36°49′11.0″ N, longitude 076°17′22.0″ W and bounded to the north by a line drawn from latitude 36°50′17.5″ N, longitude 076°17′45.0″ W to latitude 36°50′17.5″ N, longitude 076°17′30.0″ W.
34	April—4th Saturday and Sunday.	Wet Spring Regatta.	Windsurfing Enthusiasts of Tidewater.	The waters of Willoughby Bay contained within the following coordinates: latitude 36°58′36″ N, longitude 076°18′42″ W, to latitude 36°58′00″ N, longitude 076°18′00″ W, to latitude 36°57′49″ N, longitude 076°18′14″ W, to latitude 36°57′36″ N, longitude 076°17′55″ W, to latitude 36°57′26″ N, longitude 076°18′06″ W, to latitude 36°58′15″ N, longitude 076°19′08″ W, to latitude 36°58′36″ N, longitude 076°18′42″ W.
35	May—2nd Friday and Saturday.	Hydroplane races	Virginia Boat Racing Assn.	All waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′18″ N, longitude 076°23′10″ W, to latitude 36°50′18″ N, longitude 076°21′42″ W, to latitude 36°50′12″ N, longitude 076°21′42″ W, to latitude 36°50′12″ N, longitude 076°23′10″ W, to latitude 36°50′18″ N, longitude 076°23′10″ W.
36	May—last Friday, Saturday and Sunday or June—1st Friday, Saturday and Sunday.	Blackbeard Festival.	Hampton Event Makers.	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 76°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 76°20′32.0″ W. Spectator Vessel Anchorage Areas—Area A: Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01′48.0″ N, longitude 76°20′22.0″ W, across the river to the eastern shore at latitude 37°01′44.0″ N, longitude 76°20′13.0″ W, and to the north by the C & O Railroad Bridge. The anchorage area will be marked by orange buoys. Area B: Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01′26.0″ N, longitude 76°20′24.0″ W, latitude 37°01′22.0″ N, longitude 76°20′26.0″ W, and latitude 37°01′22.0″ N, longitude 76°20′23.0″ W. The anchorage area will be marked by orange buoys.

TABLE 1 TO § 100.501.—ALL COORDINATES LISTED IN TABLE 1 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location 1
37	June—1st Friday, Saturday and Sunday.	Norfolk Harborfest	Norfolk Festevents, Ltd.	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
38	June—1st Friday and Saturday.	Ocean City Maryland Offshore Challenge.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N, longitude 075°03′06″ W; thence east southeast to latitude 38°25′30″ N, longitude 075°02′12″ W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N, longitude 075°03′48″ W; thence west northwest to the shoreline at latitude 38°19′30″ N, longitude 075°05′00″ W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22′25.2″ N, longitude 075°03′49.4″ W, thence easterly to latitude 38°22′00.4″ N, longitude 075°02′34.8″ W, thence southwesterly to latitude 38°19′35.9″ N, longitude 075°03′35.4″ W, thence westerly to a position near the shoreline at latitude 38°20′05″ N, longitude 075°04′48.4″ W, thence northerly along the shoreline to the point of origin.
39	June—3rd Saturday.	Cock Island Race	Ports Events, Inc	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
40	June—last Saturday.	RRBA Spring Radar Shootout.	Rappahannock River Boaters Association (RRBA).	The waters of the Rappahannock River, adjacent to Layton, VA, from shoreline to shoreline, bounded on the west by a line running along longitude 076°58′30″ W, and bounded on the east by a line running along longitude 076°56′00″ W.
41	July—3rd Sunday	Watermen's Heritage Festival Workboat Races.	Watermen's Museum of Yorktown, VA.	The waters of the York River, Yorktown, Virginia, bounded on the west by a line drawn along longitude 076°31′30″ W, bounded on the east by a line drawn along longitude 076°30′50″ W, bounded on the south by the shoreline and bounded on the north by a line drawn parallel and 400 yards north of the southern shoreline.
42	July—last Wednesday and following Friday.	Pony Penning Swim.	Chincoteague Volunteer Fire Department.	The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′01″ N, longitude 075°22′40″ W, to latitude 37°54′50″ N, longitude 075°22′46″ W, and to the west by a line drawn from latitude 37°54′54.0″ N, longitude 075°23′00″ W, to latitude 37°54′49″ N, longitude 075°22′49″ W.

TABLE 1 TO § 100.501.—ALL COORDINATES LISTED IN TABLE 1 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location 1
43	August—1st Friday, Saturday and Sunday.	Power boat race ..	East Coast Boat Racing Club of New Jersey.	The waters of the Chesapeake Bay, along the shoreline adjacent to Cape Charles, Virginia, to and including waters up to 300 yards offshore, parallel with the Cape Charles Beach shoreline in this area. The area is bounded on the south by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′.2″ N, longitude 076°01′28.5″ W, to a point offshore approximately 300 yards at latitude 37°16′3.4″ N, longitude 076°01′36.6″ W, and bounded on the north by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′26.2″ N, longitude 076°01′14″ W, to a point offshore approximately 300 yards at latitude 37°16′28.9″ N, longitude 076°01′24.1″ W.
44	August—2nd Friday, Saturday and Sunday.	Hampton Cup Regatta.	Virginia Boat Racing Association.	The waters of Mill Creek, adjacent to Fort Monroe, Hampton, Virginia, enclosed by the following boundaries: to the north, a line drawn along latitude 37°01′00″ N, to the east a line drawn along longitude 076°18′30″ W, to the south a line parallel with the shoreline adjacent to Fort Monroe, and the west boundary is parallel with the Route 258—Mercury Boulevard Bridge.
45	September—2nd Friday and Saturday.	Ocean City power boat race.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N, longitude 075°03′06″ W; thence east southeast to latitude 38°25′30″ N, longitude 075°02′12″ W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N, longitude 075°03′48″ W; thence west northwest to the shoreline at latitude 38°19′30″ N, longitude 075°05′00″ W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22′25.2″ N, longitude 075°03′49.4″ W, thence easterly to latitude 38°22′00.4″ N, longitude 075°02′34.8″ W, thence southwesterly to latitude 38°19′35.9″ N, longitude 075°03′35.4″ W, thence westerly to a position near the shoreline at latitude 38°20′05″ N, longitude 075°04′48.4″ W, thence northerly along the shoreline to the point of origin.
46	September—2nd Friday, Saturday and Sunday.	Hampton Bay Days Festival.	Hampton Bay Days Inc.	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 076°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 076°20′32.0″ W.
47	October—1st Saturday and Sunday.	Virginia Boat Racing Association.	Clarksville Hydroplane Challenge.	The waters of the John H. Kerr Reservoir, adjacent to the State Route 15 Highway Bridge and Occoneechee State Park, Clarksville, Virginia, from shoreline to shoreline, bounded on the south by a line running northeasterly from a point along the shoreline at latitude 36°37′14″ N, longitude 078°32′46.5″ W, thence to latitude 36°37′39.2″ N, longitude 078°32′08.8″ W, and bounded on the north by the State Route 15 Highway Bridge.
48	October—2nd Friday.	U.S. Navy Fleet Week Celebration.	U.S. Navy	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50'51.0″ N, longitude 076°18'09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51'00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50'29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
49	October—2nd Saturday and Sunday.	Hydroplane races	Virginia Boat Racing Assn.	All waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′18″ N, longitude 076°23′10″ W, to latitude 36°50′18″ N, longitude 076°21′42″ W, to latitude 36°50′12″ N, longitude 076°21′42″ W, to latitude 36°50′12″ N, longitude 076°23′10″ W, to latitude 36°50′18″ N, longitude 076°23′10″ W.

TABLE 1 TO § 100.501.—ALL COORDINATES LISTED IN TABLE 1 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location 1
50	October—2nd Sunday.	Poquoson Seafood Festival Workboat Races.	City of Poquoson	The waters of the Back River, Poquoson, Virginia, bounded on the north by a line drawn along latitude 37°06′30″ N, bounded on the south by a line drawn along latitude 37°06′15″ N, bounded on the east by a line drawn along longitude 076°18′52″ W and bounded on the west by a line drawn along longitude 076°19′30″ W.
51	October—last Saturday and Sunday.	Hampton Roads Sailboard Classic.	Windsurfing Enthusiasts of Tidewater.	The waters of Willoughby Bay contained within the following coordinates: latitude 36°58′36″ N, longitude 076°18′42″ W, to latitude 36°58′00″ N, longitude 076°18′00″ W, to latitude 36°57′49″ N, longitude 076°18′14″ W, to latitude 36°57′36″ N, longitude 076°17′55″ W, to latitude 36°57′26″ N, longitude 076°18′06″ W, to latitude 36°58′15″ N, longitude 076°19′08″ W, to latitude 36°58′36″ N, longitude 076°18′42″ W.
52	November—1st Friday and Saturday.	International Search and Rescue Competition.	U.S. Coast Guard and Canadian Auxiliaries.	The waters of the Southern Branch of the Elizabeth River including the North Ferry Landing, from shoreline to shoreline, bounded to the north by a line drawn along Latitude 36°50′23″ N and bounded to the south by a line drawn along Latitude 36°50′12″ N.
53	November—4th or last Saturday.	Holidays in the City.	Norfolk Festevents, Ltd.	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
Coast Guard Sector North Carolina—COTP Zone				
54	June—2nd Saturday and Sunday.	Carolina Cup Regatta.	Virginia Boat Racing Assn.	The waters of the Pasquotank River, adjacent to Elizabeth City, NC, from shoreline to shoreline, bounded on the west by the Elizabeth City Draw Bridge and bounded on the east by a line originating at a point along the shoreline at latitude 36°17′54″ N, longitude 076°12′00″ W, thence southwesterly to latitude 36°17′35″ N, longitude 076°12′18″ W at Cottage Point.
55	August—1st Friday, Saturday and Sunday.	SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix.	Super Boat International Productions (SBIP), Inc.	The waters of the Pamlico River including Chocowinity Bay, from shoreline to shoreline, bounded on the south by a line running northeasterly from Camp Hardee at latitude 35°28′23″ N, longitude 076°59′23″ W, to Broad Creek Point at latitude 35°29′04″ N, longitude 076°58′44″ W, and bounded on the north by the Norfolk Southern Railroad Bridge.

TABLE 1 TO § 100.501.—ALL COORDINATES LISTED IN TABLE 1 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location 1
56	September—4th or last Sunday.	Crystal Coast Super Boat Grand Prix.	Super Boat International Productions Inc.	The waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N, longitude 076°42′48″ W, thence westerly to Morehead City Channel Day beacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Day beacon 2 (LLNR 38720), thence southeasterly to Money Island Day beacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Day beacon 2 (LLNR 38685), thence easterly to the western most shoreline of Brant Island approximate position latitude 34°42′36″ N, longitude 076°42′11″ W, thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N, longitude 076°41′20″ W, thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N, longitude 076°40′52″ W, thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N, longitude 076°40′52″ W, thence northerly along the shoreline to approximate position latitude 34°43′00″ N, longitude 076°41′25″ W, thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N, longitude 076°42′12″ W, thence westerly to the southern tip of Sugar Loaf Island the point of origin.
57	September—last Saturday.	Wilmington YMCA Triathlon.	Wilmington, NC, YMCA.	The waters of, and adjacent to, Wrightsville Channel, from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N, longitude 077°48′10″ W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N, longitude 77°48′53″ W.

§ 100.502 [Removed].

3. Remove section 100.502.

§ 100.504 [Removed].

4. Remove section 100.504.

§ 100.505 [Removed].

5. Remove section 100.505.

§ 100.506 [Removed].

6. Remove section 100.506.

§ 100.507 [Removed].

7. Remove section 100.507.

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§ 100.526 [Removed].

23. Remove section 100.526.

§ 100.527 [Removed].

24. Remove section 100.527.

§ 100.529 [Removed].

25. Remove section 100.529.

§ 100.530 [Removed].

26. Remove section 100.530.

§ 100.531 [Removed].

27. Remove section 100.531.

§ 100.532 [Removed].

28. Remove section 100.532.

§ 100.533 [Removed].

29. Remove section 100.533.

§ 100.534 [Removed].

30. Remove section 100.534.

§ 100.535 [Removed].

31. Remove section 100.535.

§ 100.536 [Removed].

32. Remove section 100.536.

Dated: February 28, 2008.

Fred M. Rosa, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E8–4707 Filed 3–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2006–0004]

RIN 0651–AC00

Examination of Patent Applications That Include Claims Containing Alternative Language

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Proposed rule; request for comment on initial regulatory flexibility analysis.

SUMMARY: The United States Patent and Trademark Office (Office) published a notice proposing to revise the rules of practice pertaining to any claim using alternative language to claim two or more independent and distinct inventions (Alternative Claims Notice of Proposed Rule Making). The Office has prepared an initial regulatory flexibility analysis (IRFA) on this proposed change to the rules of practice. This notice publishes the IRFA and requests public comment on the IRFA. This notice also invites public comment on the Alternative Claims Notice of Proposed Rule Making.

DATES: Written comments on the IRFA or Alternative Claims Notice of Proposed Rule Making must be received on or before April 9, 2008. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet. Comments on the IRFA should be addressed to *markush-irfa.comments@uspto.gov*, and comments on the proposed rule changes in the Alternative Claims Notice of Proposed Rule Making should be addressed to *markush.comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (571) 273–7754, marked to the attention of Kathleen Kahler Fonda, Legal Advisor, Office of Patent Legal Administration. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available on the Office's Internet Web site at (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Kathleen Kahler Fonda, Legal Advisor, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7754; by mail addressed to: Box Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450; or by facsimile to (571) 273–7754, marked to the attention of Kathleen Kahler Fonda.

SUPPLEMENTARY INFORMATION: The Office published the Alternative Claims Notice of Proposed Rule Making in the **Federal Register** in August of 2007. *See Examination of Patent Applications That Include Claims Containing Alternative Language*, 72 FR 44992 (Aug. 10, 2007), republished at 1322 *Off. Gaz. Pat. Office* 22 (Sept. 4, 2007). This notice supplements the Alternative Claims Notice of Proposed Rule Making. The Alternative Claims Notice of Proposed Rule Making indicated that the changes being proposed involve rules of agency practice and procedure for which prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), and thus neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required under 5 U.S.C. 603. *See Examination of Patent Applications That Include Claims Containing Alternative Language*, 72 FR at 44999.

The Office received several comments concerning the impact of the proposed rules on small businesses and independent inventors. The Office continues to believe that a regulatory flexibility analysis is not required for the Alternative Claims Notice of Proposed Rule Making. The Office, however, has decided to subject the proposed rules to a regulatory flexibility analysis to provide a further opportunity for comment on the small business impact of the proposed rules. Specifically, the Office has commissioned a detailed analysis of the impact of the proposed rules on small entities, and has prepared an IRFA. This notice publishes and requests public comment on the IRFA.

The Alternative Claims Notice of Proposed Rule Making indicated that comments on the proposed changes to the rules of practice were to have been submitted by October 9, 2007. This notice also provides another opportunity to submit comments on the changes to the rules of practice proposed in the Alternative Claims Notice of Proposed Rule Making.

1. *Description of the reasons that action by the agency is being considered:* The Office is proposing to revise the rules of practice pertaining to any claim using alternative language because patent applicants sometimes use Markush or other alternative formats to claim two or more independent and distinct inventions and/or to recite hundreds, if not thousands, of alternative embodiments in one claim. Such claims are confusing, difficult to understand, and frequently border on being unmanageable. Proper search of such complex claims, particularly those using Markush language, often consume a disproportionate amount of Office resources as compared to other types of claims. The prosecution of these complex claims likewise often requires separate examination and patentability determinations for each of the alternatives within the claim, *e.g.*, if the alternatives raise separate prior art, enablement, or utility issues. Furthermore, the variety and frequency of alternatives recited in claims filed in applications pending before the Office, driven in part by trends in emerging technologies, have exacerbated problems with pendency. *See Examination of Patent Applications That Include Claims Containing Alternative Language*, 72 FR at 44992–97.

2. *Succinct statement of the objectives of, and legal basis for, the proposed rules:* The objective of the proposed changes is to improve practices pertaining to claims that recite alternatives in a manner that will enhance the Office's ability to grant quality patents that effectively promote innovation in a timely manner. *See Examination of Patent Applications That Include Claims Containing Alternative Language*, 72 FR at 44992. The authority for the proposed changes is 35 U.S.C. 2(b)(2)(A) and (C) (authorizes the establishment of regulations to govern the conduct of proceedings in the Office and facilitate and expedite the processing of patent applications), 112 (requires applicants to submit one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention), 121 (authorizes the Office to restrict an application to a single invention when two or more independent and distinct inventions are claimed), and 131 (authorizes the Office to cause an examination to be made of an application). *See In re Harnisch*, 631 F.2d 716, 722 n.6, 206 USPQ 300, 306 n.6 (CCPA 1980) (inviting the Office to exercise its rule making powers to forestall procedural problems arising from Markush claims).

3. *Description and estimate of the number of affected small entities:* The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These

regulations generally define small businesses as those with fewer than a maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. The Office, however, has formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR 67109 (Nov. 20, 2006).[1]

Unlike the SBA small business size standards set forth in 13 CFR 121.201, this size standard is not industry-specific. Specifically, the Office's definition of small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR at 67112.

The proposed rule will apply to any such small entity who files a patent application and chooses to use alternative language in claiming his or her invention. To estimate the number of applications containing alternative language that are submitted by small entities, Office staff analyzed applications filed in fiscal year 2005 (FY05) (the most recent year for which complete eighteen-month publication data are available). Using the preceding definition of small entity, the Office screened these published applications for commonly used alternative language (*e.g.*, ''contains one selected from the group consisting of'') and identified 20,824 small entity applications as containing alternative language and, therefore, as potentially affected by the proposed rule. The Office estimates that this represents approximately 31 percent of total applications containing alternative language.

As anticipated, a larger proportion of applications containing alternative language is concentrated in the biotechnology/chemical arts (an estimated 9,186 of the 21,187 small entity applications in the biotechnology/chemical arts or 43.4 percent). The remaining applications with alternative language are distributed throughout the electrical and mechanical arts (an estimated 11,638 of the 73,831 small entity applications in the electrical/mechanical arts or 15.8 percent). These results are summarized in Table 1.

TABLE 1.—SMALL ENTITY APPLICATIONS (FY05)

Type of art	Number of small entity applications	Number of small entity applications containing alternative language	Percent
Biotechnology/Chemical Applications	21,187	9,186	43.4
Electrical/Mechanical Applications	73,831	11,638	15.8
Total Applications	95,018	20,824	21.9

4. Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rules, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record: The proposed rule could potentially impact applicants in two ways. First, it would require that a claim must be limited to a single invention. Consequently, if a submitted application contains a single claim that defines multiple independent and distinct inventions, then the examiner may apply a restriction requirement. *See Examination of Patent Applications That Include Claims Containing Alternative Language*, 72 FR at 44995. In this case of an intra-claim restriction, applicants who wish to pursue patent protection for the full scope covered by their initial application would have to file a divisional application for each additional invention defined in that original claim. For example, if a single claim contains three independent and distinct inventions and the Office requires restriction, the applicant could file two divisional applications to prosecute the full scope of the original claims. Alternatively, the applicant could elect not to file any divisional applications, in which case he or she would be limited to the one invention elected in the initial application.

To estimate the costs of one divisional application, the Office is using unit cost data from the American Intellectual Property Law Association (AIPLA) Report of the Economic Survey[2] and the Office fee schedule for fiscal year 2007. Based on these data, the Office estimates that the cost of filing one divisional application is $10,258 (expressed in present value terms using a 7 percent discount rate). The cost faced by applicants could be greater than this amount if the applicant files more than one divisional.

Second, the proposed rule allows examiners to require applicants to simplify the presentation of claims with alternative language so that:

[1] This alternate small business size standard is the previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on the patent application as qualifying for reduced patent fees, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

[2] *AIPLA Report of the Economic Survey 2007*. Table Q33g, Third Quartile, ''Patent application amendment/argument, relatively complex, biotechnology/chemical (Preparation and Filing).'' Page I–74; Table Q33l, Third Quartile, ''Issuing an allowed application (all post-allowance activity).'' Page I–81; Table Q33n, Third Quartile, ''Pay a Maintenance Fee.'' Page I–76.

(1) The number and presentation of alternatives in a single claim are not difficult to construe.

(2) No alternative is itself defined as a set of further alternatives within the claim.

(3) No alternative is encompassed by any other alternative within a list of alternatives unless there is no other practical way to define the invention.

(4) All alternatives are substitutable for each other.

See Examination of Patent Applications That Include Claims Containing Alternative Language, 72 FR at 44996.

Consequently, if an examiner determines that a claim does not comply with one or more of the format requirements listed above, the applicant can be required to correct the claim. The applicant would provide this correction to the claim by submitting an amendment to the application.

To estimate the cost of amending an application in order to correct the format of the claim(s), the Office is using unit cost data on amendments from the AIPLA Report of the Economic Survey.[3] Based on the AIPLA data, the Office estimates that the cost of filing one amendment to correct the format of the claim(s) is $4,029 (expressed in present value terms using a 7 percent discount rate). The cost faced by applicants could be less than or greater than this amount, depending on how difficult it is to correct the format of the claim(s).

Any particular application containing alternative language could be impacted by either, both, or neither of these two effects, and would fall into one of the following four categories:

(1) Applications with alternative language that do not claim multiple inventions in a single claim and have claim(s) in a proper format.

(2) Applications with alternative language that claim multiple inventions in a single claim and have claim(s) in a proper format.

(3) Applications with alternative language that do not claim multiple inventions in a single claim but have claim(s) in an improper format.

(4) Applications with alternative language that claim multiple inventions in a single claim and have claim(s) in an improper format.

Applications within the first of these categories have ''acceptable'' alternative language, and small entities submitting such applications would not incur any incremental costs of note. The remaining three categories, however, contain applications that generally would lead to incremental costs. Applications in category 4, which require both a divisional application and an amendment, incur the greatest cost ($14,287). Table 2 summarizes the compliance activities and corresponding cost estimates.

TABLE 2.—INCREMENTAL COST ESTIMATES

Compliance activity	Cost (present value)
Category 1 applications containing acceptable alternative language	n.a.
Category 2 applications needing one divisional application	$10,258
Category 3 applications needing one amendment to correct the format of the claim(s)	4,029
Category 4 applications needing one divisional application and one amendment to correct the format of the claim(s)	14,287

To estimate the number of small entity applications in each category, the Office examined a sample of 102 FY05 small entity applications with alternative language from the biotechnology/chemical arts and 57 FY05 small entity applications with alternative language from the electrical/mechanical arts. For these applications, the Office identified and categorized the impact of the proposed rule. The Office then scaled these findings to the overall number of small entity applications.

Using this methodology, the Office estimates that 82 percent of affected small entity applications in the biotechnology/chemical arts and 98 percent of affected small entity applications in the electrical/mechanical arts would fall into category 1 and would not incur any notable incremental costs associated with the rule. The remaining 18 percent of affected small entity applications in the biotechnology/chemical arts and 2 percent of affected small entity applications in the electrical/mechanical arts would incur costs to comply with the proposed rule requirements. In total, the analysis shows that an estimated 1,825 small entity applications would incur compliance costs under the proposed rule. Table 3 summarizes these results.

TABLE 3.—SMALL ENTITY APPLICATIONS CONTAINING ALTERNATIVE LANGUAGE BY COST IMPACT CATEGORY

	Biotechnology/chemical applications FY05		Electrical/mechanical applications FY05		Total	
	Number	Percent	Number	Percent	Number	Percent
Category 1: Small entity applications with acceptable alternative language	7,565	82	11,434	98	18,999	91
Category 2: Small entity applications with alternative language that claim multiple inventions in a single claim	991	11	204	2	1,195	6
Category 3: Small entity applications with alternative language that have claim(s) in an improper format	270	3	0	0	270	1
Category 4: Small entity applications with alternative language that claim multiple inventions in a single claim and have claim(s) in an improper format	360	4	0	0	360	2
Total Small Entity Applications with Alternative Language (Categories 1–4)	9,186	100	11,638	100	20,824	100

[3] *AIPLA Report of the Economic Survey 2007*. Table Q33g, Third Quartile, ''Patent application amendment/argument, relatively complex, biotechnology/chemical (Preparation and Filing).'' Page I–74.

TABLE 3.—SMALL ENTITY APPLICATIONS CONTAINING ALTERNATIVE LANGUAGE BY COST IMPACT CATEGORY—Continued

	Biotechnology/chemical applications FY05		Electrical/mechanical applications FY05		Total	
	Number	Percent	Number	Percent	Number	Percent
Total Small Entity Applications with a Cost Impact (Categories 2–4)	1,621	18	204	2	1,825	9

In the Office's analysis of these applications, the number of claims in an improper format ranged from one to four claims per application. Some applications had only dependent claims that were in an improper format, while others had only independent claims that were in an improper format. One application had independent and dependent claims in an improper format. Although the incremental cost faced by applicants could vary depending on the complexity and number of claims needing correction, the Office's use of AIPLA's 75th percentile unit cost estimate for an amendment already accounts for some variation in costs (*i.e.*, the 75th percentile may be a high estimate for most applications) and would seem to be a conservative figure.

In the Office's analysis of the sampled applications containing two or more independent and distinct inventions that are claimed in the alternative in a single claim, the median number of divisional applications required to maintain the scope of the application was 5, although some applications would have required more than 100 divisional applications to maintain scope.

The wide variation in the estimated number of divisional applications is informative when considering the cost impact of the proposed rule for small entity applicants. However, the Office believes that an applicant would need to file at most approximately seven divisional applications following an examiner's restriction requirement, even if more were needed to seek patent protection for the full scope of the originally claimed inventions.[4] Therefore, while the cost impact of intra-claim restrictions could be as low as zero for applicants that elect not to maintain scope, it could range as high as the cost of seven divisional applications (present value of approximately $42,000). However, the Office believes these applications are relatively few in number and the impact for most applicants will be far less.

5. Description of any significant alternatives to the proposed rules which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rules on small entities: The Office has considered a number of alternatives; however, none of these alternatives would accomplish the stated objectives of applicable statutes with a lesser economic impact on small entities.

(1) *Hiring more examiners:* This alternative would increase the number of examiners available to review patent applications in general, thereby improving pendency. It would not lead to impacts on small entities. However, this alternative also would not make it any easier to review applications containing problematic alternative language. The Office is currently hiring as many examiners as resources permit. The Office's ability to hire qualified new examiners is affected by many components, such as budget, the economy, the availability of scientists and engineers, and the ability to absorb and train new employees. Thus, the Office already is employing this ''alternative'' to the extent that its resources permit, but relying upon this alternative ''alternative'' alone without taking additional steps would frustrate the Office's ability to grant quality patents in a timely manner that effectively promote innovation.

(2) *Charging additional fees for applications containing claims using alternative language:* This option could reduce the number of affected small entities by creating a financial disincentive to submitting applications containing claims using alternative language. However, the Office's past efforts to seek patent fee adjustments does not lead to an expectation that the Office would be successful in obtaining a patent fee adjustment that would in fact recover the Office's actual cost of examining applications containing claims using alternative language. In addition, any patent fee adjustment for applications containing claims using alternative language that was sufficient to recover the Office's actual cost of examining applications would likely have a greater economic impact on a larger number of small entities than the proposed rule changes. Finally, for applicants that chose to submit alternative language despite the requirement to pay additional fees, this alternative would not improve the patent prosecution process or result in higher quality patents.

(3) *Limiting the number of species that may be presented in an application:* The rules of practice currently provide that if an ''application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.'' *See* 37 CFR 1.146. A rule that set out a per se limit on the number of species that may be claimed in an application would not accomplish the objective of the proposed rules of treating applications with two or more independent and distinct inventions presented in a single claim. Furthermore, the potential change in the scope of protection available via a single patent application likely would have a greater economic impact on larger number of small entities than the proposed rule changes.

(4) *Exempting small entities (or take no action):* While exempting small entities from coverage of the proposed rules or any part thereof (or taking no action) would avoid any incremental economic impact on small entities, such exemption (or lack of action) would frustrate the Office's ability to grant quality patents in a timely manner that effectively promote innovation. It also would result in small entity applications (or, in the case of no action, all applications) with two or more independent and distinct inventions presented in single claim that either: (1) Consume a disproportionate share of Office examination resources per application and thus not effectively promoting innovation in a timely manner; or (2) receive a less thorough examination, which would decrease, rather than enhance, the Office's ability to grant quality patents. Finally, given

[4] Applicants may file divisional applications sequentially to keep a case pending for the lifetime of a patent (twenty years) to take advantage of the time to determine whether any of their inventions turn out to have market value. The least-cost method of achieving this result would involve an applicant pursuing one divisional application at a time over a twenty-year period. Assuming the prosecution of each divisional application lasts three years, an applicant would be able to minimize the total cost by filing approximately seven divisional applications during this period.

the Office's estimate (as previously noted) that close to one third of all patent applications containing alternative language are submitted by small entities, this alternative would greatly diminish the rule making's ability to improve the patent prosecution process and result in higher quality patents.

6. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rules: The Office is the sole U.S. government agency responsible for administering the provisions of title 35, United States Code, pertaining to examination and granting patents. Therefore, no other federal, state, or local entity shares jurisdiction over the examination and granting patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)).

Nevertheless, the Office believes that there are no other duplicative or overlapping rules.

7. Request for data and information in support of the Final Regulatory Flexibility Analysis: The Office welcomes comments addressing the economic impact on small entities of any or all provisions of the proposed rule. In particular, however, the Office is soliciting information on the following:

1. Alternative approaches that would reduce the burden of the rule for small entities while meeting the Office's objectives.

2. The costs of modifying an application that already is under review as needed to comply with the rule:

a. The cost of filing one or more divisional applications.

b. The cost of correcting a claim that is in an improper format, and factors that might cause this cost to vary.

3. The number of patent applications submitted by unique small entities per year (or per decade).

4. Factors that influence an applicant's decision to file divisional applications.

5. Issues that might affect the combined impact of alternative language that requires intra-claim restriction and is of an improper format.

6. The extent to which applicants will adjust to the new rules over time, such that future initial patent applications containing alternative language will comply with the proposed rule (*i.e.*, the applications will not need to incur the cost of amendments or divisional applications due to alternative language that is of an improper format or requires intra-claim restriction).

7. The benefits of the rule making.

8. Other information related to this Initial Regulatory Flexibility Analysis, including any assumptions or findings stated above.

Dated: March 5, 2008.

John Doll,

Commissioner for Patents.

[FR Doc. E8–4744 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7765]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before June 9, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7765, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (email) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental

impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Tangipahoa Parish, Louisiana, and Incorporated Areas				
Natalbany River	Approximately 2.5 miles upstream of State Route 40 intersection.	+100	+97	Town of Amite City, Unincorporated Areas of Tangipahoa Parish.
	Approximately 185 feet upstream of State Route 1048	+181	+183	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Town of Amite City
Maps are available for inspection at 212 E. Oak St., Amite, LA 70422

Unincorporated Areas of Tangipahoa Parish
Maps are available for inspection at 15481 Club Deluxe Rd., Hammond, LA 70403

Orange County, New York, and Incorporated Areas				
Summit Brook	Approximately 50 feet downstream of East Lake Road	None	+562	Village of Tuxedo Park.
	Approximately 1,318 feet downstream of East Lake Road.	None	+562	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

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ADDRESSES

Village of Tuxedo Park
Maps are available for inspection at Tuxedo Park Village Hall, 80 Lorillard Road, Tuxedo Park, NY.

Haywood County, North Carolina, and Incorporated Areas				
Allen Creek	At the confluence with Richland Creek	+2740	+2741	Unincorporated Areas of Haywood County, Town of Waynesville.
	Approximately 0.6 mile upstream of New Allens Creek Road (State Road 1147).	None	+3093	
Beaverdam Creek	At the confluence with Pigeon River	+2578	+2587	Unincorporated Areas of Haywood County, Town of Canton.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Just downstream of Smathers Cove Road (State Road 1614).	None	+2712	
Big Creek	At the confluence with Pigeon river	None	+1409	Unincorporated Areas of Haywood County.
	Approximately 120 feet upstream of Mount Sterling Road (State Road 1397).	None	+1547	
Browning Branch	At the confluence with Richland Creek	+2707	+2708	Unincorporated Areas of Haywood County, Town of Waynesville.
	Approximately 650 feet upstream of Browning Branch Road (State Road 1142).	None	+3054	
Campbell Creek	At the confluence with Jonathan Creek	+3006	+3005	Unincorporated Areas of Haywood County, Town of Maggie Valley.
	Approximately 1,000 feet upstream of Campbell Creek Road (State Road 1214).	None	+3362	
Cataloochee Creek	At the confluence with Pigeon River	None	+2272	Unincorporated Areas of Haywood County.
	Approximately 3.5 miles upstream of the confluence with Pigeon River.	None	+2458	
Cove Creek (into Fines Creek).	At the confluence with Fines Creek	None	+2473	Unincorporated Areas of Haywood County.
	Approximately 0.9 mile upstream of the confluence with Fines Creek.	None	+2576	
Cove Creek (into Jonathan Creek).	At the confluence with Jonathan Creek	+2476	+2475	Unincorporated Areas of Haywood County.
	Approximately 100 feet upstream of Sutton Town Road (State Road 1331).	None	+2654	
Dix Creek	At the confluence with East Fork Pigeon River	+2701	+2700	Unincorporated Areas of Haywood County.
	Approximately 440 feet upstream of Dix Creek Road (State Road 1106).	None	+3281	
East Fork Pigeon River	At the confluence with Pigeon River	+2653	+2650	Unincorporated Areas of Haywood County.
	Approximately 1.4 miles upstream of Camp Hope Road (State Road 1892).	None	+3282	
Farmers Branch	At the confluence with Richland Creek	+2672	+2671	Town of Waynesville.
	Approximately 860 feet upstream of Hazelwood Avenue.	None	+2729	
Fines Creek	At the confluence with Pigeon River	None	+2275	Unincorporated Areas of Haywood County.
	Approximately 1,300 feet upstream of Wayward Cove	None	+2597	
Hemphill Creek	Approximately 300 feet upstream of the confluence with Jonathan Creek.	None	+2589	Unincorporated Areas of Haywood County.
	Approximately 100 feet upstream of Hemphill Road (State Road 1313).	None	+2793	
Hominy Creek	At the Haywood/Buncombe County boundary	+2247	+2250	Unincorporated Areas of Haywood County, Town of Canton.
	Approximately 80 feet upstream of U.S. Highway 19 ..	None	+2407	
Hyatt Creek	At the confluence with Richland Creek	+2757	+2758	Unincorporated Areas of Haywood County, Town of Waynesville.
	Approximately 160 feet upstream of Hyatt Creek Road (State Road 1168).	None	+2857	
Jonathan Creek	At the confluence with Pigeon River	None	+2373	Unincorporated Areas of Haywood County, Town of Maggie Valley.
	Approximately 500 feet downstream of Black Camp Gap Road (State Road 1300).	None	+3512	
Lake Junaluska	Entire Shoreline	+2567	+2566	Unincorporated Areas of Haywood County.
Little East Fork Pigeon River	Approximately 100 feet upstream of the confluence with West Fork Pigeon River.	None	+2835	Unincorporated Areas of Haywood County.
	Approximately 290 feet upstream of Little East Fork Road (State Road 1129).	None	+3062	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
North Hominy Creek	At the confluence with Hominy Creek	+2389	+2392	Unincorporated Areas of Haywood County, Town of Canton.
	Approximately 0.3 mile upstream of Peaceful Path	None	+2709	
Pigeon River	At the confluence of Big Creek	None	+1409	Unincorporated Areas of Haywood County, Town of Canton, Town of Clyde.
	At the confluence of East Fork Pigeon River and West Fork Pigeon River.	+2653	+2650	
Pigeon River Tributary (Waterville Lake).	At the confluence with Pigeon River	+2594	+2595	Unincorporated Areas of Haywood County, Town of Canton.
	Approximately 950 feet upstream of Pruett Ridge	None	+2676	
Plott Creek	Approximately 200 feet upstream of the confluence with Richland Creek.	+2701	+2702	Unincorporated Areas of Haywood County, Town of Waynesville.
	Approximately 650 feet upstream of Serenity Mountain Road.	None	+3223	
Raccoon Creek	At the confluence with Richland Creek	+2577	+2576	Town of Waynesville.
	Approximately 1,040 feet upstream of Test Farm Road (State Road 1810).	None	+2652	
Richland Creek	At the confluence with Pigeon River	None	+2506	Unincorporated Areas of Haywood County, Town of Waynesville.
	Approximately 440 feet upstream of U.S. Highway 23	None	+3057	
Rush Fork	At the confluence with Pigeon River	None	+2458	Unincorporated Areas of Haywood County.
	Approximately 1,380 feet upstream of Palmer Pond Road.	None	+2588	
Shallow Flooding Area	Northeast intersection of Railroad and Lea Plant Road.	None	#3	Town of Waynesville.
	Approximately 100 feet northeast of Elysinia Avenue and Hazelwood Avenue intersection.	+2708	#3	
Shelton Creek	At the confluence with Richland Creek	+2611	+2610	Town of Waynesville.
	Approximately 500 feet upstream of U.S. Highway 276.	None	+2660	
Thickety Creek	Approximately 900 feet upstream of the confluence with Pigeon River.	+2555	+2556	Unincorporated Areas of Haywood County.
	Approximately 70 feet upstream of Incinerator Road (State Road 1550).	None	+2573	
West Fork Pigeon River	At the confluence with Pigeon River and East Fork Pigeon River.	+2653	+2650	Unincorporated Areas of Haywood County.
	Approximately 2.3 miles upstream of Steel Bridge Road (State Road 1216).	None	+3170	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Canton
Maps are available for inspection at Canton Town Hall, 58 Park Street, Canton, NC.

Town of Clyde
Maps are available for inspection at Clyde Town Hall, 8437 Carolina Boulevard, Clyde, NC.

Town of Maggie Valley
Maps are available for inspection at Maggie Valley Town Hall, 3987 Soco Road, Maggie Valley, NC.

Town of Waynesville
Maps are available for inspection at Waynesville Town Hall, 16 South Main Street, Waynesville, NC.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unincorporated Areas of Haywood County				
Maps are available for inspection at Haywood County Planning Office, 1233 North Main Street, Waynesville, NC.				
Commonwealth of Puerto Rico County, Puerto Rico, and Incorporated Areas				
Atlantic Ocean—Entire Shoreline of the Commonwealth of Puerto Rico.	Approximately 0.8 kilometers northwest of intersection of Carretera 466 and Carretera Municipal.	None	∧2.7	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 0.9 kilometer northwest of intersection of Carretera 681 and Calle B.	∧2.4	∧13.7	
Caribbean Sea	Approximately 550 meters southwest of the intersection of Calle Dr Vidal and Calle 33.	None	∧1.5	Commonwealth of Puerto Rico, Municipality of Ponce.
	Shoreline, approximately 2.7 kilometers southwest of the intersection of Carretera 307 and Calle A.	∧2.7	∧4.6	
Isla Culebra/Atlantic Ocean	Approximately 1.6 kilometers northwest of the intersection of Calle 1 and Carretera 251.	∧2.1	∧1.5	Commonwealth of Puerto Rico.
	Shoreline, approximately 3.0 kilometers northeast of the intersection of Calle 1 and Carretera 251 (Punta Flamenco).	∧4.3	∧14.3	
Isla Culebra/Ensenada Honda.	Approximately 90 meters southeast of the intersection of Calle Luis Munoz Marin and Carretera 250.	∧3.8	∧3	Commonwealth of Puerto Rico.
	Shoreline, approximately 4.0 kilometers southeast of the intersection of Calle Luis Munoz Marin and Carretera 250.	∧3.6	∧8.8	
Isla Vieques/Caribbean Sea	Approximately 3.0 kilometers southwest of the intersection of Carretera 200 and Camino Puerto Diablo.	∧2.1	∧2.4	Commonwealth of Puerto Rico.
	Shoreline, approximately 6.9 kilometers southwest of the intersection of Carretera 201 and Carretera 996.	∧3.2	∧3.8	
Isla Vieques/Vieques Passage.	Approximately 9.2 kilometers northwest of the intersection of Carretera 201 and Carretera 996.	∧2	∧2.4	Commonwealth of Puerto Rico.
	Shoreline, approximately 3.7 kilometers northwest of the intersection of Carretera 201 and Carretera 996.	∧2.8	∧6.2	
Isla Vieques/Vieques Sound	Approximately 9.7 kilometers southeast of the intersection of Carretera 200 and Camino Puerto Diablo.	∧2.1	∧2.7	Commonwealth of Puerto Rico.
	Shoreline, approximately 9.8 kilometers southeast of the intersection of Carretera 200 and Camino Puerto Diablo.	∧3.2	∧4.1	
Quebrada Cambute	At confluence with Rio Canovanillas	None	∧4.9	Commonwealth of Puerto Rico.
	Approximately 790 meters upstream of confluence with Rio Canovanillas.	None	∧12.1	
Quebrada Honda	Approximately 2,800 meters upstream of the confluence with Rio Cibuco.	∧17.4	∧17	Commonwealth of Puerto Rico.
	Approximately 2,330 meters upstream of Puerto Rico Route 2.	None	∧74.2	
	At confluence with Rio Guanajibo	None	∧89.5	
	Approximately 920 meters upstream of Sector Jeraldo	None	∧106.1	
Quebrada Mabu	At confluence with Rio Humacao	∧12.8	∧13.9	Commonwealth of Puerto Rico.
	Approximately 460 meters upstream of Calle B	None	∧43.3	
Quebrada Mariana	At confluence with Rio Humacao	∧19.6	∧19	Commonwealth of Puerto Rico.
	Approximately 3,400 meters upstream of Puerto Rico Highway 30.	None	∧75.2	
Quebrada Mariana Tributary	At confluence with Quebrada Mariana	None	∧20.5	Commonwealth of Puerto Rico.
	Approximately 110 meters upstream of Camino Manolo Lopez.	None	∧32.2	
Quebrada la Mina	Approximately 220 meters downstream of Puerto Rico Route 997.	None	∧6.1	Commonwealth of Puerto Rico.
	Approximately 930 meters upstream of Puerto Rico Route 201.	None	∧77.7	
Quebrada la Mina Tributary	Confluence with Quebrada la Mina	None	∧45.6	Commonwealth of Puerto Rico.
	Approximately 755 meters upstream of confluence with Quebrada la Mina.	None	∧82.3	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Rio Bairoa	At confluence with Rio Grande de Loiza Reach 2	∧51.3	∧50.9	Commonwealth of Puerto Rico.
	Approximately 290 meters upstream of Calle Gardena	∧90.3	∧90.1	
Rio Caguitas	At confluence of Rio Grande de Loiza Reach 2	∧52.1	∧51	Commonwealth of Puerto Rico.
	Approximately 1,830 meters upstream of Calle Canaboncito.	None	∧81.2	
Rio Canas	Confluence with Rio Matilde	11.7	∧10.4	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 520 meters upstream of Avenida Ponce De Leon.	38.3	∧40.3	
Rio Culebrinas (at San Sebastian).	Approximately 1,120 meters downstream of Calle Jose Torres Pino.	None	∧57.3	Commonwealth of Puerto Rico.
	Approximately 1,160 meters upstream of Carretera 119.	None	∧69	
Rio Culebrinas (at San Sebastian) Tributary.	At confluence with Rio Culebrinas (at San Sebastian)	None	∧60.8	Commonwealth of Puerto Rico.
	Approximately 710 meters upstream of Calle Hostos Cabrera.	None	∧64.1	
Rio Culebrinas (downstream reach).	Approximately 473 meters upstream of Puerto Rico Highway 2.	∧9	∧8.7	Commonwealth of Puerto Rico.
	Approximately 1,210 meters upstream of Calle Concepcion Vera Ayala.	None	∧18.6	
Rio Fajardo	Approximately 1,140 meters upstream of mouth	None	∧1	Commonwealth of Puerto Rico.
	Approximately 2,050 meters upstream of Carretera 977.	None	∧60.7	
Rio Grande de Anasco	Approximately 300 meters upstream of mouth	∧3	∧2	Commonwealth of Puerto Rico.
	Approximately 2,370 meters upstream of Carretera 406.	None	∧20	
Rio Grande de Humacao	Approximately 230 meters above mouth	∧2.9	∧2	Commonwealth of Puerto Rico.
	Approximately 1,920 meters upstream of Carretera 914.	None	∧46.5	
Rio Grande de Loiza Reach 1.	Approximately 25 meters upstream of Puerto Rico Highway 3.	∧12.8	∧13.1	Commonwealth of Puerto Rico.
	Approximately 5,120 meters upstream of Puerto Rico Highway 181.	None	∧28.1	
Rio Grande de Loiza Reach 2.	Approximately 3,640 meters downstream of Puerto Rico Highway 30.	None	∧49.5	Commonwealth of Puerto Rico.
	Approximately 2,700 meters upstream of Carretera 183.	None	∧96.4	
Rio Grande de Manati	Approximately 130 meters upstream of mouth	∧1.5	∧3	Commonwealth of Puerto Rico.
	Approximately 100 meters upstream of Puerto Rico Route 145.	∧45.4	∧49	
Rio Guanajibo	Approximately 50 meters downstream of Carretera 102.	∧2	∧2.4	Commonwealth of Puerto Rico.
	Approximately 2,150 meters upstream of Carretera 368.	None	∧113	
Rio Guatemala	At confluence with Rio Culebrinas (at San Sebastian)	None	∧53.6	Commonwealth of Puerto Rico.
	Approximately 1,650 meters upstream of Carretera 111.	None	∧71.4	
Rio Guayanes	Approximately 450 meters upstream of mouth	None	∧3.3	Commonwealth of Puerto Rico.
	Approximately 4,330 meters upstream of Carretera 182.	None	∧34.3	
Rio Guayo	Approximately 300 meters upstream of the confluence with Rio Inabon.	∧45.3	∧45.8	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 44 meters upstream of Puerto Rico Route 512.	∧156.8	∧156.1	
Rio Gurabo	At confluence with Rio Grande de Loiza Reach 2	∧49.6	∧46.8	Commonwealth of Puerto Rico.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 1,800 meters upstream of Carretera 31	None	∧71.4	
Rio Inabon	Approximately 96 meters upstream of mouth	None	∧2.4	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 7,005 meters upstream of Calle 1	130.9	∧132.5	
Rio Jacaguas	Approximately 96 meters upstream of mouth	None	∧2.4	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 162 meters upstream of Puerto Rico Route 149.	∧78.2	∧77.4	
Rio Jacaguas (at Villalba)	Approximately 1,180 meters downstream of Puerto Rico Route 150.	None	∧133.4	Commonwealth of Puerto Rico.
	Approximately 2,010 meters upstream of Puerto Rico Route 561.	None	∧196	
Rio Limones	At confluence with Rio Guayanes	None	∧14.8	Commonwealth of Puerto Rico.
	Approximately 120 meters upstream of Carretera 902	None	∧37.6	
Rio Matilde	Approximately 800 meters downstream of Puerto Rico Route 52.	∧2.5	∧2.1	Commonwealth of Puerto Rico.
	Confluence with Rio Canas and Rio Pastillo	∧11.7	∧10.3	
Rio Pastillo	Confluence with Rio Matilde	∧11.7	∧10.4	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 80 meters upstream of Puerto Rico Route 132.	∧42.7	∧42	
Rio Sabana	Approximately 875 meters above mouth	None	∧2.7	Commonwealth of Puerto Rico.
	Approximately 1.050 meters upstream of Carretera 983.	None	∧26.5	
Rio Turabo	At confluence with Rio Grande de Loiza Reach 2	∧59.1	∧57.4	Commonwealth of Puerto Rico.
	Approximately 7,500 meters upstream of Calle Georgetti.	None	∧105.8	
Rio Valenciano	At confluence with Rio Guarabo	∧59	∧59.8	Commonwealth of Puerto Rico.
	Approximately 1,040 meters upstream of Carretera 928.	None	∧70	
Vieques Passage	Approximately 3.9 kilometers southeast of the intersection of Carretera 3 and Carretera 31.	∧2.2	∧1.8	Commonwealth of Puerto Rico.
	Shoreline, approximately 4.1 kilometers southeast of the intersection of Carretera 3 and Carretera 31 (Punta Lima).	∧3.3	∧9.8	
Vieques Sound	At intersection of Forrestal Drive and Tarawa Drive	∧2.6	∧3.4	Commonwealth of Puerto Rico.
	Shoreline, approximately 3.1 kilometers northeast of intersection of Avenida el Conquistador and Carretera Cabezas.	∧2.9	∧5.2	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Commonwealth of Puerto Rico

Maps are available for inspection at Puerto Rico Planning Board, North Building, 16th Floor, De Diego Avenue, Stop 22 Santurce, San Juan, PR.

Municipality of Ponce

Maps are available for inspection at Ponce City Hall, Calle Villa—Frente a Plaza Las Delicias, Ponce, PR.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
King County, Washington, and Incorporated Areas				
North Creek	Approximately 690 feet upstream of NE 195th Street, landward of east levee.	None	+34	City of Bothell, City of Woodinville.
	Approximately at SR 522, east of I–405, landward of east levee.	None	+34	
	Approximately 820 feet upstream of North Creek Parkway, landward of east levee.	None	+42	
North Creek	Approximately 100 feet upstream of N 195th Street, landward of west levee.	None	+36	City of Bothell.
	Approximately 820 feet upstream of North Creek Parkway, landward of west levee.	None	+42	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Bothell
Maps are available for inspection at 9654 NE 182nd St., Bothell, WA.

City of Woodinville
Maps are available for inspection at 17301–133rd Ave NE, Woodinville, WA 98072.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: February 28, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–4638 Filed 3–7–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7764]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1-percent-annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before June 9, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7764, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management

requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Santa Clara County, California, and Incorporated Areas				
San Tomas Aquino Creek	Approximately 20 feet downstream of Quito Road	None	+376	City of Monte Sereno.
	Approximately 460 feet upstream of Quito Road	None	+439	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Monte Sereno
Maps are available for inspection at City of Monte Sereno Engineering Department, 18041 Saratoga-Los Gatos Road, Monte Sereno, CA.

Solano County, California, and Incorporated Areas				
Napa River	Approximately 115 feet east of the intersection of Murphy Lane and Tyler Road.	+9	+10	City of Vallejo, Unincorporated Areas of Solano County.
Napa River	Approximately 820 feet northeast of the intersection of L Street and Railroad Avenue.	None	+9	City of Vallejo.
San Pablo Bay	Approximately 290 feet south of the intersection of Cedar Avenue and I Street.	None	+10	City of Vallejo.
	Approximately 0.4 mile west of the intersection of Lawes Street and Dump Road.	None	+11	
San Pablo Bay	Approximately 0.4 mile south of the intersection of Mesa Road and 13th Street.	None	+12	City of Vallejo, Unincorporated Areas of Solano County.
	Approximately 0.5 mile west of the intersection of Lawes Street and Dump Road.	None	+13	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Vallejo

Maps are available for inspection at City of Vallejo Public Works Department, 555 Santa Clara Street, Vallejo, CA.

Unincorporated Areas of Solano County

Maps are available for inspection at Solano County Public Works Department, 675 Texas Street, Suite 5500, Fairfield, CA.

Jones County, Georgia, and Incorporated Areas

Ocmulgee River	Approximately 14,050 feet downstream of River North Boulevard.	None	+316	Unincorporated Areas of Jones County.
	Approximately 16,790 feet upstream of River North Boulevard.	None	+332	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Jones County

Maps are available for inspection at Zoning and Planning Department, P.O. Box 1359, 166 Industrial Boulevard, Gray, GA 31032–1359.

Walton County, Georgia, and Incorporated Areas

Alcovy River	Approximately 525 feet downstream of confluence of Cedar Creek Southeast.	None	+782	Unincorporated Areas of Walton County.
	Approximately 1,740 feet upstream of confluence of Cedar Creek Southeast.	None	+784	
Apalachee River	Approximately 2,600 feet downstream of upstream county boundary with Gwinnett County.	None	+820	Unincorporated Areas of Walton County.
	At upstream county boundary with Gwinnett County ...	None	+823	
Bay Creek	Approximately 345 feet downstream of county boundary with Gwinnett County.	None	+792	Unincorporated Areas of Walton County.
	Approximately 670 feet upstream of county boundary with Gwinnett County.	None	+796	
Big Haynes Creek	At downstream county boundary with Rockdale County.	None	+846	Unincorporated Areas of Walton County.
	At upstream county boundary with Gwinnett County ...	None	+849	
Brushy Fork Creek	Approximately 1,740 feet downstream of Centerville Rosebud Road.	None	+862	Unincorporated Areas of Walton County, City of Loganville.
	Approximately 2,550 feet upstream of Old Loganville Road.	None	+906	
Cedar Creek Southeast	At confluence with Alcovy River	None	+782	Unincorporated Areas of Walton County.
	Approximately 2,840 feet upstream of confluence with Alcovy River.	None	+796	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Loganville

Maps are available for inspection at 4385 Pecan Street, Loganville, GA 30052.

Unincorporated Areas of Walton County

Maps are available for inspection at 303 South Hammond Drive, Suite 330, Monroe, GA 30655.

Canyon County, Idaho, and Incorporated Areas

Boise River	Approximately 2000 feet upstream of I–84	+2361	+2360	City of Caldwell, City of Star, Unincorporated.
	At Canyon County/Ada County Boundary	+2454	+2456	Areas of Canyon County.
Indian Creek	Just upstream of Sewer Treatment Plant	+2354	+2353	City of Nampa, City of Caldwell.
	Just upstream of Canada Road	+2550	+2556	Unincorporated Areas of Canyon County.
Mason Creek	At confluence with Boise River	None	+2370	City of Nampa, City of Caldwell.
	Just upstream of Lone Tree Lane/Ustick Road	None	+2450	Unincorporated Areas of Canyon County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Caldwell

Maps are available for inspection at 621 Cleveland Boulevard, 2nd Floor, Caldwell, ID 83605.

City of Nampa

Maps are available for inspection at 411 3rd Street South, Nampa, ID 83651.

City of Star

Maps are available for inspection at 10769 West State Street, Star, ID 83669.

Unincorporated Areas of Canyon County

Maps are available for inspection at 1115 Albany Street, Caldwell, ID 83605.

Accomack County, Virginia, and Incorporated Areas

Chesapeake Bay	Base Flood Elevation changes ranging from 4 to 6 feet have occurred along the northern, southern, eastern, and western perimeter, as well as interior areas of the island.	+4	+6	Town of Tangier.
Occohannock Creek (Chesapeake Bay).	Aproximately Route 178 (Shields Bridge Road)	+4	+8	Town of Belle Haven.
	Approximately the northern community boundary for Belle Haven along Occohannock Creek.	+4	+8	
Onancock Creek (Chesapeake Bay).	Base Flood Elevations have changed along the northern, central, & southern branches of Onancock Creek. Changes extend from the western confluence of these three branches to their eastern most extent within the community boundary of the Town of Onancock.	+5	+7	Town of Onancock.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Town of Belle Haven
Maps are available for inspection at P.O. Box 238, Belle Haven, VA 23306.

Town of Onancock
Maps are available for inspection at 15 North Street, Onancock, VA 23417.

Town of Tangier
Maps are available for inspection at 4301 Joshua Thomas Lane, Tangier, VA 23440.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: February 20, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–4723 Filed 3–7–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7767]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before June 9, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7767, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within

the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Swain County, North Carolina, and Incorporated Areas				
Adams Creek	Approximately 650 feet upstream of the confluence with Oconaluftee River.	None	+1874	Eastern Band of Cherokee Indians.
	Approximately 130 feet upstream of Red Clay Road ..	None	+2233	
Alarka Creek	At the confluence with Little Tennessee River	None	+1710	Unincorporated Areas of Swain County.
	Approximately 1,100 feet upstream of Unahala Creek Road (State Road 1138).	None	+2556	
Bunches Creek	Approximately 150 feet upstream of the confluence with Raven Fork.	+2384	+2385	Eastern Band of Cherokee Indians.
	Approximately 0.8 mile upstream of Bunches Creek Road.	None	+3158	
Conley Creek	At the confluence with Tuckasegee River	None	+1845	Unincorporated Areas of Swain County.
	Approximately 1,900 feet upstream of Childers Barn Lane.	None	+2113	
Cooper Creek	At the confluence with Tuckasegee River	+1795	+1792	Unincorporated Areas of Swain County, Eastern Band of Cherokee Indians.
	Approximately 100 feet upstream of Issac Wiggins Road.	None	+2057	
Deep Creek	At the confluence with Tuckasegee River	+1741	+1740	Unincorporated Areas of Swain County, Town of Bryson City.
	Approximately 150 feet upstream of Access Road to Deep Creek Campgrounds.	None	+1805	
Goose Creek	At the upstream side of Goose Creek Road	None	+1855	Eastern Band of Cherokee Indians.
	Approximately 1,050 feet upstream of Goose Creek Road.	None	+1904	
Jenkins Branch	At the confluence with Tuckasegee River	+1728	+1727	Town of Bryson City.
	Approximately 200 feet upstream of Eastside Drive	None	+1815	
Kirkland Creek	At the confluence with Tuckasegee River	+1754	+1751	Unincorporated Areas of Swain County, Town of Bryson City.
	Approximately 100 feet upstream of Kirklands Creek Road (State Road 1164).	None	+2222	
Little Tennessee River	At the North Carolina/Tennessee State boundary	None	+1088	Unincorporated Areas of Swain County.
	Approximately 150 feet upstream of the Swain/Macon County boundary.	None	+1857	
Nantahala River	At the confluence with Little Tennessee River	None	+1710	Unincorporated Areas of Swain County.
	At the Swain/Macon County boundary	None	+1985	
Oconaluftee River	Approximately 1.0 mile upstream of the confluence with Raven Fork.	None	+2056	Unincorporated Areas of Swain County.
	Approximately 1.8 miles upstream of the confluence with Raven Fork.	None	+2135	
Pigeon Creek	Approximately 20 feet upstream of confluence with Raven Fork.	None	+2257	Eastern Band of Cherokee Indians.
	Approximately 0.7 mile upstream of the confluence with Raven Fork.	None	+2717	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Raven Fork	Approximately 1,650 feet upstream of Big Cove Road	None	+2638	Eastern Band of Cherokee Indians.
	Approximately 0.5 mile upstream of Big Cove Road	None	+2663	
Shepherd Creek	At the confluence with Kirkland Creek	None	+1844	Unincorporated Areas of Swain County.
	Approximately 1.4 miles upstream of the confluence with Kirkland Creek.	None	+2232	
Silvermine Creek	At the confluence with Nantahala River	None	+1724	Unincorporated Areas of Swain County.
	Approximately 100 feet upstream of Taylor Road (State Road 1104).	None	+2151	
Straight Fork	Approximately 100 feet upstream of the confluence with Raven Fork.	+2454	+2455	Eastern Band of Cherokee Indians.
	Approximately 1.0 mile upstream of the confluence with Raven Fork.	None	+2558	
Toot Hollow Branch	At the confluence with Tuckasegee River	+1735	+1734	Unincorporated Areas of Swain County, Town of Bryson City.
	Approximately 330 feet upstream of Monteith Road (State Road 1334).	None	+1806	
Tuckasegee River	At the confluence with Little Tennessee River	None	+1710	Unincorporated Areas of Swain County, Eastern Band of Cherokee Indians, Town of Bryson City.
	At the upstream side of U.S. 74/U.S. 441	None	+1845	
Wesser Creek	At the confluence with Conley Creek	None	+1984	Unincorporated Areas of Swain County.
	Approximately 200 feet upstream of Estes Drive	None	+2052	
Wesser Creek (into Nantahala River).	At the confluence with Nantahala River	None	+1711	Unincorporated Areas of Swain County.
	Just downstream of the confluence of Right Fork Wesser Creek.	None	+2201	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Eastern Band of Cherokee Indians
Maps are available for inspection at Ginger Lynn Welch Complex, 810 Acquoni Road, Cherokee, NC.

Town of Bryson City
Maps are available for inspection at Town of Bryson City Manager's Office, 45 Everett Street, Bryson City, NC.

Unincorporated Areas of Swain County
Maps are available for inspection at Swain County Mapping Department, 101 Mitchell Street, Bryson City, NC.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 3, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–4726 Filed 3–7–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURTIY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7756]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the table to a proposed rule published in the **Federal Register** of January 16, 2008. This correction clarifies the table representing the flooding source(s), location of referenced elevation, the effective and modified elevation in feet and the communities affected for Pulaski County, Arkansas, and Incorporated Areas; specifically, for flooding sources ''Good Earth Drain, Isom Creek, Kinley Creek, Little Maumelle River, Nowlin Creek, South

Loop, South Split, Taylor Loop Creek and Tributary 4 to Little Maumelle River,'' than was previously published.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1-percent-annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Correction

In proposed rule FR Doc. E8–725, beginning on page 2860 in the issue of January 16, 2008, make the following corrections, in the table published under the authority of 44 CFR 67.4. On page 2860, in § 67.4, in the table with center heading Pulaski County, Arkansas, and Incorporated Areas, the flooding source, location of referenced elevation, the effective and modified elevation in feet and the communities affected for flooding sources ''Good Earth Drain, Isom Creek, Kinley Creek, Little Maumelle River, Nowlin Creek, South Loop, South Split, Taylor Loop Creek and Tributary 4 to Little Maumelle River'', need to be corrected to read as follows:

* * * * *

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Pulaski County, Arkansas, and Incorporated Areas				
Good Earth Drain	Approximately 250 ft downstream of Cantrell Rd. Intersection.	+283	+281	City of Little Rock.
	Divergence from Taylor Loop Creek	+287	+285	
Isom Creek	Confluence with Taylor Loop Creek	+264	+265	Unincorporated Areas of Pulaski County, City of Little Rock.
	Approximately 100 feet upstream of Russ Street	+346	+345	
Kinley Creek	Confluence with Nowlin Creek	+350	+292	Unincorporated Areas of Pulaski County.
	Approximately 50 feet downstream of Garrison Rd intersection.	+413	+411	
Little Maumelle River	Approximately 445 feet upstream of intersection with Highway 300.	+268	+270	Unincorporated Areas of Pulaski County.
	Intersection with Brush Mountain Trail	+564	+561	
Nowlin Creek	Confluence with Little Maumelle River	+268	+271	Unincorporated Areas of Pulaski County.
	Approximately 3200 feet upstream of Forestry Road intersection.	+500	+497	
South Loop	Confluence with Taylor Loop Creek	+264	+266	Unincorporated Areas of Pulaski County.
	Divergence with Taylor Loop Creek	+306	+305	
South Split	Approximately 700 feet upstream from confluence with South Loop.	+286	+285	Unincorporated Areas of Pulaski County, City of Little Rock.
	Divergence from South Loop	+295	+290	
Taylor Loop Creek	Confluence with Little Maumelle River	+264	+266	Unincorporated Areas of Pulaski County, City of Little Rock.
	Approximately 800 Feet upstream of Valley Estates Dr. intersection.	+431	+430	
Tributary 4 to Little Maumelle River.	Confluence with Little Maumelle River	None	+266	Unincorporated Areas of Pulaski County, City of Little Rock.
	Intersection with Cantrell Rd.	None	+301	
	Approximately 3488 feet upstream from intersection with Autumn Blaze Trail.	None	+509	

* * * * *

Dated: March 3, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–4633 Filed 3–7–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13 and 19

[FAR Case 2006–034; Docket 2007–0001; Sequence 15]

RIN 9000–AK92

Federal Acquisition Regulation: FAR Case 2006–034, Socioeconomic Program Parity

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to ensure that the FAR reflects the Small Business Administration's (SBA) interpretation of the Small Business Act and SBA regulations with regard to the relationship among various small business programs.

DATES: *Comment date:* Interested parties should submit written comments to the Regulatory Secretariat at the address shown below on or before May 9, 2008, to be considered in the formation of the final rule.

ADDRESSES: Submit comments, identified by FAR Case 2006–034, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2006–034'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2006–034. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2006–034'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006–034 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044 for clarification of content. The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. Please cite FAR case 2006–034.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this rule is to ensure that the FAR clearly reflects SBA's interpretation of the Small Business Act and SBA's interpretation of its regulations with regard to the order of precedence that applies when deciding whether to satisfy a requirement through an award to a small business, a HUBZone small business concern, a service-disabled veteran-owned small business (SDVOSB) concern or a small business participating in the 8(a) Business Development Program (8(a) Program).

This FAR rule is intended to make the following clear:

(1) There is no order of precedence among the 8(a), HUBZone, or SDVOSB Programs. However, if a requirement has been accepted by SBA under the 8(a) Program, it must remain in the 8(a) Program unless SBA agrees to its release in accordance with 13 CFR 124, 125 and 126.

(2) For acquisitions exceeding $100,000, the contracting officer must consider making award under the 8(a), HUBZone or SDVOSB Programs (either set-aside or sole source) before the contracting officer proceeds with a small business set-aside. See 19.203(b) and 19.502–2(b).

After having considered making award under the 8(a), HUBZone or SDVOSB Programs, the contracting officer may set aside an acquisition for small business, with one exception. By statute (15 U.S.C. 657a(b)(2)(B)), the contracting officer cannot set the acquisition aside for small business if the criteria for setting it aside for HUBZone small business are met.

(3) FAR 19.502–2(a) sets forth the requirement to exclusively reserve acquisitions for small business between $3,000 and $100,000 unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more small businesses that are competitive in terms of market prices, quality, and delivery. This proposed rule clarifies that these small business set-asides do not preclude award of a contract to a qualified HUBZone small business concern pursuant to the HUBZone Program, an 8(a) Program participant pursuant to the 8(a) Program, or to a SDVOSB concern pursuant to the SDVOSB Program because the SBA's regulations give the contracting officer discretionary authority to use the HUBZone, 8(a), or SDVOSB Programs at these dollar levels. In addition, the rule shows that, unlike procurements that are expected to exceed $100,000, it is not mandatory that the contracting officer set aside an acquisition for HUBZone small business concerns before setting aside the requirement for small businesses.

(4) SBA believes that progress in fulfilling the various small business goals, as well as other factors such as the results of market research and the acquisition history, should be considered in making a decision as to which program to use for the acquisition.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This change may have a significant economic impact on a significant number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, because it will clarify the relationship among various small business programs with regard to whether one has priority over another for acquisition purposes. It has been unclear to the acquisition community if there is an order of precedence that applies when deciding whether to satisfy a requirement through an award to small business, HUBZone small business, service disabled veteran-owned small business or a small business participating in the 8(a) Business Development Program. This proposed rule will have both a negative and positive impact on the 8(a) Business Development Program, the HUBZone Program, the Service-Disabled Veteran-Owned Small Business Program and the Small Business Program.

Viewed as a whole, there is no impact on the small business community, as this rule does not increase or decrease the number of contracts awarded to small businesses. However, there will be a negative impact on contractors with a particular preference who lose a contract set-aside to another socioeconomic category of contractors with a different preference who gain the contract set-aside, who thereby will receive a positive impact. The FAR Secretariat has submitted a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*, FAR Case 2006–034, in correspondence. The analysis is summarized as follows:

The purpose of this proposed rule is to revise the FAR to ensure that it complies with SBA's interpretation of the Small Business Act and the SBA regulations that implement that Act. The entities that will be affected are small businesses that do business with the Federal Government. Generally, all current and potential Government contractors must register in the Central Contractor Registration (CCR) to be eligible for contract award and payment. There are approximately 313,512 small business firms; 13,000 HUBZone firms; 9,947 8(a) firms and 9,614 SDVO SBC currently registered in CCR that may be affected by this proposed rule.

There are no significant alternatives that would reduce any impact on small businesses. The FAR rule is implementing SBA's interpretation of the Small Business Act and SBA's implementing regulations.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does not apply because the proposed rule does not contain information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 13 and 19

Government procurement.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 13 and 19 as set forth below:

1. The authority citation for 48 CFR parts 13 and 19 continue to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

2. Amend section 13.003 by revising the first sentence in paragraph (b)(2) to read as follows:

13.003 Policy.

* * * * *

(b) * * *

(2) The contracting officer may make an award under the 8(a) Program (see Subpart 19.8) or set aside for HUBZone small business concerns (see 19.1305) or service-disabled veteran-owned small business concerns (see 19.1405) an acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold. * * *

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

3. Amend section 19.202 by revising the first sentence to read as follows:

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed in this section and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subparts 19.5, 19.8, 19.13, or 19.14. * * *

4. Amend subpart 19.2 by adding section 19.203 to read as follows:

19.203 Relationship among small business programs.

(a) Acquisitions subject to the small business set-aside at 19.502–2(a).

The requirement to exclusively reserve acquisitions for small business at 19.502–2(a) does not preclude the contracting officer from awarding a contract under the—

(1) 8(a) Program (Subpart 19.8);

(2) HUBZone Program (Subpart 19.13); or

(3) Service-Disabled Veteran-Owned Small Business Procurement Program (SDVOSB)(Subpart 19.14).

(b) *Acquisitions subject to the small business set-aside at 19.502–2(b).* (1) The contracting officer must consider the 8(a), HUBZone, and SDVOSB programs before using a small business set-aside. There is no order of precedence among the 8(a), HUBZone, and SDVOSB programs. However, if a requirement has been accepted by SBA under the 8(a) Program, it must remain in the 8(a) Program unless SBA agrees to its release in accordance with 13 CFR 124, 125 and 126; and

(2) The contracting officer must set aside an acquisition for HUBZone small business concerns if the conditions at 19.1305 are met, before considering a small business set-aside.

5. Amend section 19.501 by—

a. Removing paragraphs (c) and (d);

b. Redesignating paragraphs (e), (f), (g), (h), and (i) as (c), (d), (e), (f), and (g), respectively; and

c. Revising the second sentence of new paragraph (c) to read as follows:

19.501 General.

* * * * *

(c) * * *. The contracting officer shall perform market research and document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless an award is anticipated under the 8(a), HUBZone or service-disabled veteran-owned small business programs. * * *

* * * * *

6. Amend section 19.502–2 by adding a new first sentence and revising the last sentence in paragraph (a) and adding a new first sentence in paragraph (b) to read as follows:

19.502–2 Total small business set-asides.

(a) Before setting aside an acquisition under this paragraph, refer to 19.203(a). * * *. The small business reservation does not preclude the award of a contract as described in 19.203 or 19.1007(c).

(b) Before setting aside an acquisition under this paragraph, follow 19.203(b). * * *

* * * * *

7. Amend section 19.800 by revising paragraph (e) to read as follows:

19.800 General.

* * * * *

(e) Before deciding to set aside an acquisition in accordance with Subpart 19.5, the contracting officer must consider offering the acquisition under the 8(a) Program (see 19.203).

* * * * *

8. Amend section 19.1305 by revising paragraphs (a) through (d) to read as follows:

19.1305 HUBZone set-aside procedures.

(a) The contracting officer—

(1) May set aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied (see 19.203);

(2) Must set-aside acquisitions exceeding the simplified acquisition threshold for HUBZone small business

concerns before setting them aside for small business concerns or conducting the acquisition using full and open competition if the conditions in paragraph (b) of this section are met; and

(3) Must consider HUBZone set-asides before considering HUBZone sole source awards (see 19.1306).

(b) To set aside an acquisition for competition restricted to HUBZone small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more HUBZone small business concerns; and

(2) Award will be made at a fair market price.

(c) A contracting officer may set aside acquisitions exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns at the sole discretion of the contracting officer, provided the requirements of paragraph (b) of this section can be satisfied.

(d) If the contracting officer receives only one acceptable offer from a qualified HUBZone small business concern in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from HUBZone small business concerns, the HUBZone set-aside shall be withdrawn.

* * * * *

9. Amend section 19.1405 by revising paragraph (a) and the second sentence of paragraph (c) to read as follows:

19.1405 Service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer—

(1) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to service-disabled veteran-owned small business concerns when the requirements of paragraph (b) of this section can be satisfied (see 19.203); and

(2) Must consider service-disabled veteran-owned small business set-asides before considering service-disabled veteran-owned small business sole source awards (see 19.1406) or small business set-asides (see 19.5).

* * * * *

(c) * * *. If the contracting officer receives no acceptable offers from service-disabled veteran-owned small business concerns, the service-disabled veteran-owned set-aside shall be withdrawn.

* * * * *

19.1406 [Amended]

10. Amend introductory paragraph (a) by removing ''19.501(d)'' and adding ''19.203'' in its place.

[FR Doc. E8–4561 Filed 3–7–08; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register
Vol. 73, No. 47
Monday, March 10, 2008

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

ARMED FORCES RETIREMENT HOME

Notice of Availability of a Record of Decision

AGENCY: Armed Forces Retirement Home.

ACTION: Notice of availability of a Record of Decision on the Final Environmental Impact Statement for the proposed Master Plan for its campus located at 3700 North Capital Street, NW., in Washington, DC.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.* and the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), the Armed Forces Retirement Home (AFRH) announces the availability of a Record of Decision on the Final Environmental Impact Statement for the proposed Master Plan for its campus located at 3700 North Capital Street, NW., in Washington, DC. On February 26, 2008, the Chief Operating Officer of the Armed Forces Retirement Home approved the Record of Decision for the Environmental Impact Statement for the proposed Master Plan for the AFRH-Washington campus. Specifically, AFRH has chosen to implement Alternative 3A (Selected Alternative) from the Final Environment Impact Statement for the creation of a master plan for AFRH-W that will sustain the AFRH and its primary source of funding, the AFRH Trust Fund. The Record of Decision (ROD) documents the specific components of AFRH's decision and the rationale for the decision. This decision is based on analyses contained in the Draft Environmental Impact Statement (EIS) issued in May 2005; the Final EIS issued in November 2007; the comments of Federal and state agencies, members of the public, and elected officials; and other information in the administrative record.

The decision to implement the Selected Alternative involved balancing resource concerns and public interests. AFRH reached its decision after careful consideration of the environmental analysis of the effects of the build alternatives and the no build alternative, in concert with its needs. The Selected Alternative includes key measures to avoid and minimize impacts including (1) Minimizing impacts to the historic components of AFRH-W including adaptive re-use of buildings which contribute to the historic character of the site and retention of key landscape features, such as the meadow on the southern portion of the site; (2) providing new construction that is compatible with surrounding land uses, including placement of retail and commercial development along North Capitol and Irving Streets, low scale residential development along Park Place, and institutional uses around the AFRH-W administrative and residential areas; (3) providing park and open space amenities for AFRH-W residents and the surrounding community; (4) providing affordable housing; and (5) providing commercial and retail opportunities to serve the surrounding community.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, an overview of public involvement in the decision-making process, and identification of the specific mitigation measures that will pursued as of the selected alternative. This decision is the result of a public planning process that began in 2004. The official responsible for this decision is the Chief Operating Officer of the Armed Forces Retirement Home.

ADDRESSES: The Record of Decision and other information may be obtained from the contacts listed below, or may be viewed online at *http://www.afrhdevelopment.com*.

FOR FURTHER INFORMATION CONTACT: Joe Woo, AFRH, 3700 N. Capitol St, P.O. Box 1303, Washington, DC 20011–8400, (202) 202–730–3038, or Tim Sheckler, GSA, 301 7th Street, SW., Room 7709, Washington, DC 20407, (202)–401–5806.

Dated: February 29, 2008.

Timothy Cox,

Chief Operating Officer Armed Forces Retirement Home.

[FR Doc. E8–4639 Filed 3–7–08; 8:45 am]

BILLING CODE 8250–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.
Title: Census Participation Survey.
Form Number(s): None.
OMB Control Number: None.
Type of Request: New collection.
Burden Hours: 1,667.
Number of Respondents: 4,000.
Average Hours per Response: 25 minutes.

Needs and Uses: Every ten years, the U.S. Census Bureau is constitutionally and congressionally mandated, pursuant to Title 13 U.S.C. Section 141, to count everyone (citizens and non-citizens) residing in the United States. An accurate count is critical for many reasons including but not limited to:

- Congressional reapportionment;
- Redistricting congressional boundaries;
- Community planning; and
- Distribution of public funds and program development.

To facilitate the data collection effort for the 2010 Census, the Census Bureau is developing an Integrated Communications Plan (ICP). Toward that end, the Census Bureau has contracted with DraftFCB to develop and implement an integrated communications campaign for the 2010 Census. DraftFCB had contracted with MACRO International, Inc. (who in turn has subcontracted with Human Resources Research Organization) to conduct a nationwide quantitative data collection to understand the barriers and motivators underlying participation (or lack thereof) in Census 2010. This data collection is critical to ensure the utility and effectiveness of the ICP.

The role of the ICP is to increase public awareness and motivate people

to respond to the census promptly, saving millions of taxpayer dollars. The specific objectives of the ICP are:

- Increase mail response;
- Improve cooperation with enumerators; and
- Improve overall accuracy and reduce differential undercount.

From 1970—the first year questionnaires were mailed to households—to 1990, the mail response rate declined from 78 percent to 65 percent. To halt the declining mail response rate, the Census Bureau ran a paid advertising campaign to support data collection activities for the 2000 Census. This campaign was considered a very successful initiative and one of several reasons cited with helping to reverse declining mail response rates.

The target mail response rate for the 2010 Census has been set at 69 percent, higher than the 67 percent obtained in Census 2000. To support this goal, the ICP includes a communications campaign based on behavior during the 2000 Census and current knowledge, attitudes, perceptions, barriers, and motivations specific to 2010 Census participation.

The Census Bureau is requesting clearance for DraftFCB's subcontractor, MACRO International, Inc. to conduct the Census Participation Survey to gain an in-depth understanding of the public's opinions about the 2010 Census. Collecting this information allows the Census Bureau to explore underlying factors contributing to public views of the 2010 Census; identify census related behavioral drivers and barriers; determine communication channels for reaching historically hard-to-count populations; and analyze messages they should convey to motivate the public to participate—potentially saving hundreds of millions of taxpayer dollars used to collect the census data.

The primary purpose of the Census Participation Survey is to inform tactical and strategic decisions for the ICP. This research is designed to complement previous participation research conducted for Census 2000 as well as the Census Planning Database (a geographic summary file with Census 2000 response information) to inform the strategic direction of the 2010 Census Integrated Communications Plan (ICP). The data collected will not be used to produce official Census Bureau estimates of the population.

When possible, respondents to the Census Participation Survey will be matched to the Census Planning Database (PDB) by tract number to link to Census 2000 census participation and hard-to-count data. In cases where a link to tract can be made, we will further roll cases back up into an eight-cluster segmentation scheme based on the PDB. The Census Participation Survey will make use of three different sampling frames described below:

Address Frame: No address information is collected from the respondent. The selected addresses are sampled from the USPS's Delivery Sequence File (DSF) and geo-coded to link to census tract.

RDD Landline Frame: No address information is collected from the respondent. Telephone numbers will be reverse matched to local telephone directories to identify as many addresses as possible. These addresses will be geo-coded to link to census tract. For those with no match (unlisted telephone numbers), we use the estimated census tract based on the telephone exchange and geographic associations.

RDD Cell Phone Frame: For cell phone respondents, we cannot determine geographic location since cell phone area codes are not always geographically associated. Instead, we will rely on demographic data such as age, marital status, mobility, tenure, and whether the household is cell-phone only to assign interviews into segment.

The combined data will be used to measure census awareness, attitudes, knowledge, and likelihood to respond to the census. This data will be used to further define the audience segmentation clusters to inform the communications strategy. Further, the data will be used to evaluate census messaging alternatives and analyze media consumption by audience segmentation.

The Census Participation Survey also serves as a baseline measure of 2010 Census for monitoring change in awareness and intent to participate during the build-up and execution of Census 2010.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

Legal Authority: The legal authority under which this information is being collected is the general authority of the Census Bureau to undertake the decennial Census in 2010, Title 13 U.S.C. 141.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–4635 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Procedures for Acceptance or Rejection of Rated Orders.

OMB Control Number: 0694–0092.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 21,389.

Number of Respondents: 18,000.

Average Hours per Response: 1 to 15 minutes.

Needs and Uses: Under the Defense Priorities Allocation System regulation, timely delivery goods and services, to meet current national defense, energy, and emergency preparedness program requirements in support of approved national defense programs, is critical. The order information is used by the customer who placed the rated order with a supplier to help track the status from initial receipt by the supplier to its shipment or performance of the needed goods or services. The information will also be used by the Department of Defense and its associated agencies, Department of Energy, and Department of Commerce, as part of the information required to provide assistance to the customer in the event that the supplier cannot or will not make timely delivery or performance of the needed goods or services.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285 or via the Internet at *David_Rostker@omb.eop.gov*.

Dated: March 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–4636 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Export and Reexport Controls for Iraq.

OMB Control Number: 0694–0129.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 19.

Number of Respondents: 5.

Average Hours per Response: 3 to 3½ hours.

Needs and Uses: A company wishing to export or reexport commodities and technical data for infrastructure rebuilding projects in Iraq is required to submit a Special Iraq Reconstruction License package to BIS. These documents are used as the basis for decisions to grant licenses for export or reexport of items covered by the Commerce control list.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285 or via the Internet at *David_Rostker@omb.eop.gov*.

Dated: March 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–4637 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–549–813

Canned Pineapple Fruit from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: March 10, 2008.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby, Office of AD/CVD Operations 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3782.

Background

On August 20, 2007, the Department of Commerce (the Department) published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on canned pineapple fruit from Thailand for Vita Food Factory (1989) Ltd. (Vita). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 48613 (August 20, 2007). The period of review for Vita is July 1, 2006 through June 30, 2007.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of the review within 120 days after the date on which the notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245–day period to 365 days and to extend the 120–day period to 180 days.

Due to the need for further analysis of Vita's questionnaire response, particularly with respect to Vita's reported selling agents and commissions, the Department finds that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the deadline for completion of the preliminary results of this administrative review of the antidumping duty order on canned pineapple fruit from Thailand by 120 days from April 1, 2008 until no later than July 30, 2008.

This notice is issued and published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 3, 2008.

Gary S. Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–4640 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–549–813

Canned Pineapple Fruit from Thailand: Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review

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

EFFECTIVE DATE: March 10, 2008.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2371.

Background

On December 27, 2007, the Department published the preliminary results of the new shipper review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand for the period July 1, 2006 through December 31, 2006. *See Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty New Shipper Review*, 72 FR 73318 (December 27, 2007). This review covers the respondent, C & A Products Co., Ltd. (C&A), a producer/exporter of the subject merchandise to the United States.

Extension of Time Limit for Final Results

The final results of this new shipper review are currently due on March 18, 2008. Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act) requires the Department to issue the final results of a new shipper review of an antidumping order within 90 days after the date the preliminary results are issued. However, if the review is extraordinarily complicated, the Act allows the Department to extend the time limit for the final results to a maximum of 150 days. This new shipper review involves complicated material costs that differ between the U.S. and the comparison market. The Department must therefore perform additional analysis specifically with regard to the information collected at verification which was conducted subsequent to the issuance of the preliminary results. Thus, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time period for issuing the final results of review by an additional 60 days. Since the 60–day extension would result in the deadline for the final results falling on May 17, 2008, which is a Saturday, the new deadline for the final results will be the next business day, May 19, 2008. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act and 351.214(i)(2) of the Department's regulations.

Dated: March 3, 2008.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–4648 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD49

Pacific Whiting; Advisory Panel

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

ACTION: Notice.

SUMMARY: NMFS is continuing its solicitation of nominations for the Advisory Panel (AP) on Pacific Whiting called for in the Pacific Whiting Act of 2006 (Act). An initial solicitation was published in the **Federal Register** on October 24, 2007 and resulted in insufficient nominations to meet the requirements of the Act. Nominations are being sought for at least 6, but not more than 12 individuals to serve as United States representatives on the AP. Nomination packages received during the initial solicitation period will be considered in final selection of United States representatives to the AP and it is not necessary to resubmit them.

DATES: Nominations must be received April 9, 2008.

ADDRESSES: You may submit nominations by any of the following methods:

- E-mail: *WhitingAP.nwr@noaa.gov*: Include 0648–XD49 in the subject line of the message.
- Fax: 206–526–6736, Attn: Frank Lockhart.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA, 98115–0070.

It is not necessary to resubmit nomination packages that were sent in during the initial solicitation period.

FOR FURTHER INFORMATION CONTACT: Frank Lockhart at 206–526–6142.

SUPPLEMENTARY INFORMATION: Title VI of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) entitled ''The Pacific Whiting Act of 2006,'' implements the 2003 ''Agreement Between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting.'' Among other provisions, the Whiting Act provides for the establishment of an AP to advise the Joint U.S. Canada Management Committee on bilateral whiting management issues. An initial solicitation was published in the **Federal Register** on October 24, 2007 (72 FR 60317) and resulted in insufficient nominations to meet the requirements of the Act. Nominations are being sought to fill at least 6 but no more than 12 positions on the Pacific Whiting AP for terms of 4–years. The Whiting Act requires that appointments to the AP be selected from among individuals who are ''(A) knowledgeable or experienced in the harvesting, processing, marketing, management, conservation, or research of the offshore whiting resource: and (B) not employees of the United States.'' Nominations are sought for any persons meeting these requirements.

Nomination Packages for appointment to the AP should include:

1. The name of the applicant or nominee and a description of his/her interest in Pacific whiting; and,

2. A statement of background and/or description of how the above qualifications are met.

The term of office for the Pacific Whiting AP members will be for 4–years (48 months). Members appointed to the AP will be reimbursed for necessary travel expenses.

In the initial year of treaty implementation, NMFS anticipates that up to 3 meetings of the AP will be required. In subsequent years, 1–2 meetings of the AP will be held annually. Meetings of the AP will be held in the United States or Canada. AP members will need a valid U.S. passport. Meetings of the AP will be held concurrently with those of the Joint Management Committee, once per year for a period not to exceed 5 days in duration.

The Pacific Whiting Act of 2006 also states that while performing their appointed duties as AP members, members ''shall be considered to be Federal Employees only for purposes of: (1) injury compensation under chapter 81 of title 5, United States Code; (2) requirements concerning ethics, conflicts of interest, and corruption as provided under title 18, United States Code; and, (3) any other criminal or civil statute or regulation governing the conduct of Federal employees.''

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

Dated: March 4, 2008.

Emily H. Menashes,

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

[FR Doc. E8–4683 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Deep Seabed Mining Regulations for Exploration Licenses

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 *May 9, 2008.*

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Helen Farr, 301–713–3155, ext. 175 or *Helen.Farr@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's regulations at 15 CFR 970 govern the issuing and monitoring of exploration licenses under the Deep Seabed Hard Mineral Resources Act. Any persons seeking a license must submit certain information that allows NOAA to ensure the applicant meets the standards of the Act. Persons with licenses are required to conduct monitoring and make reports, and they may request revisions, transfers, or extensions of licenses.

II. Method of Collection

Paper submissions are used; however, applicants are encouraged to submit supporting documentation electronically when feasible.

III. Data

OMB Control Number: 0648–0145.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time per Response: 2,000–4,000 hours per application (no applications are expected); 250 hours per renewal of application (1 application is expected to be renewed); and 20 hours per report (2 reports are expected).

Estimated Total Annual Burden Hours: 290.

Estimated Total Annual Cost to Public: $700.

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: March 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–4634 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Draft Environmental Impact Statement (DEIS), Notice of Public Comment Period for the DEIS and Schedule of Public Hearings for the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management's Review of Amendments to the Washington Coastal Management Program

AGENCY: Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management (OCRM).

ACTION: Notice of Availability of DEIS, Notice of Public Comment Period for the DEIS and Schedule of Public Hearings.

SUMMARY: NOAA's Office of Ocean and Coastal Resource Management is issuing this notice to advise the public that a DEIS for OCRM's review of amendments to the Washington Coastal Management Program has been prepared and is available for public review and comment. Written requests for the DEIS and written comments on the DEIS can be submitted to the individual listed in the section **FOR FURTHER INFORMATION CONTACT**. Public Hearings will be held on April 10, 2008 and April 11, 2008. The public comment period commenced on February 29, 2008 as noticed in the **Federal Register** at *http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=5668694961+0+0+0&WAISaction=retrieve* and will close on April 14, 2008.

Public Comment Hearings: The start of the public comment period on the DEIS commenced February 29, 2008 and will close on April 14, 2008. Two public hearings will be held; one on April 10, 2008 and one on April 11, 2008 in Lacey, Washington and Seattle, Washington, respectively. The public hearing on April 10th will be held in Lacey, Washington at the Washington State Department of Ecology Headquarters, (300 Desmond Drive) and will begin at 3:30 p.m. and last until 6:30 p.m. The public hearing on April 11th will be held in Seattle Washington at the Mountaineers Building, Tahoma 2 Room (300 Third Avenue West) and will begin at 3:30 p.m. and last until 6:30 p.m.

DEIS Availability and Review

Copies of the DEIS are available either on CD or hard copy by contacting Helen Farr at the **FOR FURTHER INFORMATION CONTACT** section below. In addition, the DEIS has been posted on OCRM's Web site at *http://coastalmanagement.noaa.gov/assessments/welcome.html* and the Washington State Department of Ecology's Web site at *http://www.ecy.wa.gov/programs/sea/czm.*

Comments from interested parties on the DEIS are encouraged and may be presented orally at the public hearings. Written comments may be submitted to OCRM during the public hearings and at the address (including e-mail address) in the section entitled **FOR FURTHER INFORMATION CONTACT**.

OCRM encourages all interested parties to provide comments concerning the scope and content of the DEIS. Comments should be as specific as possible and address the analysis of potential alternatives. This commenting procedure is intended to ensure that substantive comments and concerns are made available to OCRM in a timely

manner so that OCRM has an opportunity to address them.

SUPPLEMENTARY INFORMATION: The DEIS discloses the environmental consequences associated with OCRM's review of amendments to the State of Washington's federally-approved coastal management program (CMP). OCRM's approval of Washington's request to incorporate changes into the Washington CMP would allow the State to continue its certification as a federally-approved CMP, receive Coastal Zone Management Act (CZMA) funds to implement the revised program, and conduct State and federal consistency reviews based on the revised program policy. Incorporation of the revised Washington Shoreline Management Act Guidelines (SMA) will result in the following changes:

- Revise state guidelines requiring local governments located in the designated coastal zone to revise their Shoreline Master Programs to be consistent with the standards contained in the new Washington SMA;
- Achieve improved water quality, scenic beauty, safer development and a number of other new objectives consistent with the policies of the SMA;
- Make improvements to the existing shoreline environments as part of mitigation and restoration requirements;
- Give designated ''critical'' areas special attention where future development may result in negative impacts; and
- Ensure that activities that do not normally require a shoreline development permit still help achieve SMA policy goals.

The purpose and need for OCRM's review of the amendments is reviewed in the DEIS. All reasonable and prudent alternatives are being considered, including the no-action alternative.

FOR FURTHER INFORMATION CONTACT: Helen Farr, Environmental Protection Specialist, National Oceanic and Atmospheric Administration, OCRM/CPD, N/ORM3, Station 11209, 1305 East-West Highway, Silver Spring, MD 20910 or *Helen.Farr@noaa.gov*. Ms. Farr may be contacted during business hours at (301) 713–3155, extension 175 (telephone) and 301–713–4367 (fax).

The comments period will close on April 14, 2008.

Dated: March 4, 2008.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Federal Domestic Assistance Catalog 11.419 Coastal Zone, Management Program Administration.

[FR Doc. E8–4711 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF69

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: Notice; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application from the Gulf of Maine Research Institute (GMRI) that would exempt Atlantic herring (herring) vessels from the Management Area 1A (Area 1A) herring trawl gear restriction period contains all the required information and warrants further consideration. The 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 Herring Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made.

DATES: Comments on this document must be received on or before March 25, 2008.

ADDRESSES: Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is *herring.efp@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on GMRI herring EFP.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on GMRI herring EFP.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Cooperative Research Program Specialist, phone: 978–281–9326, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Pending final approval by NOAA's Grants Management Division, the Science Director for NMFS's Northeast Fisheries Science Center has preliminarily selected an Atlantic Herring Research Set Aside (RSA) proposal submitted by GMRI to conduct a study entitled: ''Effects of Fishing on Herring Aggregations,'' which would assess the effects of midwater trawling on herring aggregations. GMRI proposes to survey a herring aggregation using acoustic sonar prior to, during, and following trawl fishing pressure. Due to concern that other fishing vessels, particularly other herring midwater trawl vessels, fishing in the study area could interfere with the survey, GMRI submitted an EFP application to conduct its research during the herring midwater trawl gear restriction period, as specified at 50 CFR 648.202(a) and detailed below, thereby ensuring midwater trawl vessels will not be fishing in the study area.

Amendment 1 to the FMP implemented a provision that vessels fishing for herring may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 through September 30. This measure was implemented due to concern about the potential impacts of midwater trawl fishing on the inshore Gulf of Maine (GOM) herring resource and other bycatch species. These concerns relate primarily to the importance of herring as a forage species for other fish, marine mammals, and seabirds, and the localized impact that midwater trawl fishing effort may have on schools of herring in nearshore areas. Additional concern was expressed by purse seine and weir fishers that midwater trawl gear may disperse herring schools and prevent herring schools from coming inshore, thereby limiting fishing opportunities for these respective gear types. Finally, data suggest there may be differences in the species composition of bycatch and mortality of bycatch between purse seine and midwater trawl gear. Therefore, restricting midwater trawl gear in Area 1A from June through October is intended to: (1) Increase herring availability as forage for various fish, marine mammal, and seabird species; (2) improve fishing opportunities for purse seine and weir fishers; and (3) reduce bycatch and bycatch mortality resulting from midwater trawling in Area 1A. Technical reviewers and panelists for

the 2008/2009 Herring RSA Program noted that the proposed research would provide important information that would improve the understanding of midwater trawling effects on herring aggregations.

GMRI requests that a single vessel or paired vessels perform, under sonar surveillance, midwater trawling for up to four nights using standard midwater trawl gear in Area 1A between June 1 and September 30, 2008. Vessels would conduct five or fewer tows per night, with each tow lasting 2 to 4 hr. All trawling operations would be monitored by GMRI staff. All herring caught during the survey would be deducted from GMRI's Area 1A Herring RSA Program compensation allocation of 1,350 mt. Vessels conducting the survey would not be allowed to exceed their Area 1A compensation allocation while fishing under the EFP. Project investigators propose that sonar data prior to, during, and following trawl fishing pressure will illuminate the effect of midwater trawling on herring aggregations.

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: March 5, 2008.

Emily H. Menashes

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

[FR Doc. E8–4645 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF83

Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Spring Species Working Group Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee (Committee) to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces its spring meeting with its Species Working Group Technical Advisors on March 27–28, 2008. The Committee will meet to discuss matters relating to ICCAT, including the 2007 Commission meeting results; research and management activities; global and domestic initiatives related to ICCAT; consultations required under section 971d(c)(6) of the Atlantic Tunas Convention Act; the results of the meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species.

DATES: The open sessions of the Committee meeting will be held on March 27, 2008, from 8:30 a.m. to 2:30 p.m., and on March 28, 2008, from 9 a.m. to 9:15 a.m. and from 11 a.m. to 3:30 p.m. Closed sessions will be held on March 27, 2008, from 2:45 p.m. to approximately 6 p.m. and on March 28, 2008, from 9:15 a.m. to 11 a.m.

ADDRESSES: The meeting will be held at the Hilton Hotel Washington-Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910, telephone: 301–589–5200.

FOR FURTHER INFORMATION CONTACT: Ryan Wulff at (301) 713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and discuss information on: (1) the 2007 ICCAT meeting results and U.S. implementation of ICCAT decisions; (2) 2008 ICCAT and NMFS research and monitoring activities; (3) 2008 ICCAT activities; (4) global and domestic initiatives related to ICCAT; (5) consultations required under section 971d(c)(6) of the Atlantic Tunas Convention Act; (6) the results of the meetings of the Committee's Species Working Groups; and (7) other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment during the session.

The Committee will meet in its Species Working Groups for a portion of the afternoon of March 27, 2008, and of the morning of March 28, 2008. These sessions are not open to the public, but the results of the species working group discussions will be reported to the full Advisory Committee during the Committee's morning and afternoon open session on March 28, 2008. The Committee may also go into executive session on the afternoon of March 28, 2008, to discuss sensitive information relating to upcoming intersessional meetings of ICCAT. This session would also be closed to the public.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ryan Wulff at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: March 5, 2008.

Rebecca J. Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E8–4698 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG14

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council to convene its Socioeconomic Panel (SEP) via conference call.

DATES: The conference call will be held March 25, 2008, at 1 p.m. EDT.

ADDRESSES: The meeting will be held via conference call and listening stations will be available. For specific locations see **SUPPLEMENTARY INFORMATION**.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Assane Diagne, Economist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The conference call will begin at 1 p.m. EDT and conclude no later than 3 p.m. EDT. Listening stations are available at the following locations:

The Gulf Council office (see **ADDRESSES***), and the National Marine Fisheries Service (NMFS) offices as follows:*

St. Petersburg, FL

263 13th Avenue South, St. Petersburg, FL 33701, Contact: Stephen Holiman, telephone: (727) 551–5719;

Galveston, TX

4700 Ave U, Conference room - Bldg 305, Galveston, TX 77551, Contact: Ronnie O'Toole, telephone: (409) 766–3500;

Miami, FL

75 Virginia Beach Drive, Miami, FL 33149, Contact: Sophia Howard, telephone: (305) 361–4259; and

Panama City, FL

3500 Delwood Beach Road, Panama City, FL 32408, Contact: Janice Hamm, telephone: (850) 234–6541.

The SEP will hold a conference call to discuss Reef Fish Amendment 30–B. Amendment 30B contains potential management measures to define overfishing and overfished thresholds and an optimum yield (OY) target for gag; end overfishing of gag; increase the total allowable catch (TAC) of the red grouper stock to its OY level; establish recreational and commercial allocations for gag and red grouper; establish accountability measures for gag to assure compliance with ending overfishing; adjust commercial grouper quotas and recreational grouper bag limits; closed seasons; and/or size limits; reduce discards and discard mortality of groupers; establish a new reef fish marine reserve and/or extend the duration of the existing Madison-Swanson and Steamboat Lumps marine reserves; and require that federally permitted reef fish vessels comply with the more restrictive of federal or state reef fish regulations when fishing in state waters.

Although other non-emergency issues not on the agenda may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnsuon-Stevens Act), those issues may not be the subject of formal action during the meeting. Actions will be restricted to the issue specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the SEP's intent to take action to address the emergency.

Special Accommodations

The listening stations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: March 5, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–4613 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG15

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, March 27, 2008, at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. The Groundfish Oversight Committee will meet to continue development of Amendment 16 to the Northeast Multispecies Fishery Management Plan. The Committee will address a wide range of issues at this meeting. These will include additional development of effort controls for the commercial fishery, such as days-at-sea restrictions, trip limits, closed areas, gear modifications, or other input controls.

2. They will also further develop Annual Catch Limit and Accountability Measure alternatives. Sector issues may also be discussed, such as how sectors participate in Special Access Programs and technical issues with respect to calculating each permit's potential sector contribution.

3. The Committee may also review specific measures text, and may consider other groundfish management issues as time permits. Recommendations developed by the Committee will be reported to the Council at a future meeting.

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 identified 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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: March 5, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–4614 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG16

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Committee, in March, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Friday, March 28, 2008, at 10 a.m.

ADDRESSES: This meeting will be held at the Four Points Sheraton, 407 Squire Road, Revere, MA 02151: telephone: (781) 284–7200; fax: (781) 289–3176.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review Plan Development Team (PDT) recommendations for skate catch limits and/or targets for Scientific and Statistical Committee (SSC) review and discuss and recommend catch targets, taking into account biological and economic risk. The committee will also discuss and recommend methods for catch monitoring (by species, by fishery, by region, by season, etc.) and discuss and recommend accountability measures and their application. In addition, the committee will discuss and approve Amendment 3 measures recommended by the PDT to restrict skate fishing on Multispecies ''B'' days-at-sea.

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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: March 5, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–4615 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Chief of Engineers Environmental Advisory Board (hereafter referred to as the Board).

The Board is a discretionary federal advisory committee established by the Secretary of Defense to provide the Department of Defense, the Secretary of Army, and the Chief of Engineers (U.S. Army Corps of Engineers) independent advice and recommendations on environmental issues facing the Corps of Engineers. The Board, in accomplishing its mission: (a) Provides sound recommendations on specific policies, programs for the Chief of Engineers; (b) advise on topics as environmental benefit assessment and integrated water resources management.

The Board shall be composed of not more than 10 members, who are distinguished members of the natural (e.g., biological, ecological), social (e.g., anthropologist, community planner) and related sciences. Board members appointed by the Secretary of Defense, who are not federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109. Board members shall be appointed on an annual basis by the Secretary of Defense, and shall serve a term not to exceed four years. The Board membership shall select the Board's Chairperson from the total membership. Board members shall with the exception of travel and per diem for official travel, serve without compensation.

The Board shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, and other appropriate federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Department of Defense or any federal officers or employees who are not Board members.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's chairperson. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Chief of Engineers Environmental Advisory Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Chief of Engineers Environmental Advisory Board.

All written statements shall be submitted to the Designated Federal Officer for the Chief of Engineers Environmental Advisory Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Chief of Engineers Environmental Advisory Board's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Chief of Engineers Environmental Advisory Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–2554, extension 128.

Dated: March 4, 2008.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–4625 Filed 3–7–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2008–OS–0001]

Higher Limit to Initial Maximum Uniform Allowance Rate; 5 CFR Part 591, Subpart A

AGENCY: Department of Defense; Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy).

ACTION: Notice; request for comments.

SUMMARY: The Department of Defense (DoD or ''the Department''), is proposing to establish a higher limit to the initial maximum uniform allowance used to procure and issue uniform items for firefighter personnel. This proposal is pursuant to the authority granted to DoD by § 591.104 of title 5, Code of Federal Regulations (CFR), which states that an agency may establish one or more initial maximum uniform allowance rates greater than the government-wide maximum uniform allowance rate established under 5 CFR 591.103.

DATES: The Department must receive comments on or before May 9, 2008.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Olson, 703–901–6840.

SUPPLEMENTARY INFORMATION: DoD is proposing to implement a higher limit to the initial maximum uniform allowance to procure and issue uniform items for firefighter personnel. This is being proposed in accordance with 5 CFR 591.104, which states that an agency may establish one or more initial maximum uniform allowance rates greater than the government-wide maximum uniform allowance rate established under 5 CFR 591.103. The current limit has become inadequate to maintain the uniform standards and professional image expected of DoD firefighters. The uniform items for firefighters include the following items or similar items such as: Work shirts, work pants, work t-shirts, work coat, work cap, belt, dress shirts, dress pants, dress coat, dress shoes, dress hat, dress tie, weather gear, tie clips, tie bars, rank insignia, badges, patches, and name tags. The itemized total uniform cost for the listed items is $1604.14. Based on these current costs, the Department is proposing to increase the limit to the initial maximum uniform allowance for uniformed firefighter personnel to $1600.00. The number of firefighters affected by this change in the Department would be approximately 900 employees annually. The proposed effective date of this higher initial maximum uniform allowance rate is June 9, 2008.

Dated: March 4, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–4725 Filed 3–7–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2008–OS–0013]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency.

ACTION: Notice; correction.

SUMMARY: The Department of Defense is correcting a Notice to Amend a System of Records that appeared on February 29, 2008 (72 FR 11095). The document corrects the notice to include information previously omitted.

DATES: This proposed action will be effective without further notice on March 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103.

Correction

In the **Federal Register** of February 29, 2008, in FR Doc. E8–3914, on page 11095, correct to add the following information to read as follows:

K890.01

SYSTEM NAME:

Freedom of Information Act File.

SYSTEM LOCATION:

General Counsel(RGC)Headquarters, Defense Information Systems Agency, P.O. Box 4502, Arlington, VA 22204–2199.

Decentralized—DISA Field Activities World-wide. Official mailing addresses are published as an appendix to DISA's compilation of systems of records notices.

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request information under FOIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of (1) Policy File that contains DOD Directive 5400.7–R, DoD Freedom of Information Act Program; DISA Instruction 630–225–8–DISA, Freedom of Information Act Program. (2) Log File, which consists of a record of all written requests, names, addresses and phone numbers of requestors who request information under the FOIA which has been processed within DISA since January 1, 1996. (3) Correspondence received in DISA relating to FOIA, including replies thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act and DOD Directive 5400.7–R, DoD Freedom of Information Act Program.

PURPOSE(S):

For making available to the public the maximum amount of information concerning the operations and activities of DISA. DISA Management—to receive, process, and respond to requests for information under FOIA. General Counsel, DISA—to review and deny requests for information under provisions of FOIA and to forward applicable correspondence to the Director, DISA when the denial may be contested or appealed. DOD and Department of Justice—for review and in event of judicial action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' set forth at the beginning of the DISA's

compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The paper records in file folders.

RETRIEVABILITY:

Retrieved by the control number and the name of the individual who requested the information.

SAFEGUARDS:

Records are stored in a locked safe. Records pertaining to policy are permanent. Correspondence maintained for two years, then destroyed. Records are maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

All records are retained by Office of General Counsel, Headquarters, DISA, for two years. Logs are kept until reference need expires.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA Officer, Headquarters, Defense Information Systems Agency, Code GC, P.O. Box 4502, Arlington, VA 22204–2199.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Information Systems Agency ATTN: FOIA Officer Code GC, P.O. Box 4502, Arlington, VA 22204–2199.

Requests should contain individual's name, current address, and phone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address inquiries to the FOIA Officer, Defense Information Systems Agency Code GC, P.O. Box 4502, Arlington, VA 22204–2199.

Requests should contain individual's name, current address, and phone number.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225; 32 CFR part 316; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individuals concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: March 3, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–4714 Filed 3–7–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2008–OS–0023]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency.

ACTION: Notice To Add a System of Records.

SUMMARY: The Defense Threat Reduction Agency is proposing to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on April 9, 2008, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 29, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

March 3, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 026

SYSTEM NAME:

DTRA Telework Program Records.

SYSTEM LOCATION:

Employee Relations and Work Life Division, Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road MSC 6201, Fort Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been granted approval to telework on a Regular, Recurring, or Situational basis in accordance with DTRA Telework Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include individual's name; office; office phone; official duty station; alternative worksite address (GSA Telecenter, Home, Other Alternative Worksite); mileage savings; time savings; work schedule and tour of duty at the alternative worksite; regular work schedule (8 hours a day, flexitour or compressed); telework schedule; and DTRA Form 147, Telework Agreement/ Program (Telework Request and Approval Form, Self-Certification Home and Alternative Worksites, excluding GSA Telecenters, Telework Safety Checklist).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6120, Telecommuting in Executive Agencies; Under Secretary of Defense for Personnel and Readiness Memorandum, Department of Defense Telework Policy and Guide for Civilian Employees, October 22, 2001; and DoD Instruction 1035.1, Telework Policy for Department of Defense, April 3, 2007, DTRA Instruction 1100.2 Defense Threat Reduction Agency Telework Program, August 11, 2006.

PURPOSE(S):

Records are used by supervisors and more frequently used by the telework program coordinators for managing, evaluating, and reporting DTRA Telework Program activity/ participation. Data on participation in the DTRA Telework Program, minus personal identifiers, may also be provided to the Department of Defense (DoD) for a consolidated DoD response to the Office of Personnel Management (OPM) Telework Survey.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The Home and Alternative Worksites, excluding GSA Telecenters, Telework Safety Checklist may be disclosed to the Department of Labor when an employee is injured while working at home. Data on participation in the DTRA Telework Program, minus personal identifiers, may also be provided to the Department of Defense (DoD) for a consolidated DoD response to the Office of Personnel Management (OPM) Telework Survey.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic media.

RETRIEVABILITY:

By Name and/or office/official duty station.

SAFEGUARDS:

Access is limited to the Employee Relations and Work Life Division, Human Capital Office. Case records are maintained in locked security containers. Automated records are controlled by limiting physical access to terminals and by the use of passwords. Work areas are sight controlled during normal duty hours. Security guards and an intrusion alarm system protect buildings. A risk assessment has been performed and will be made available upon request. The electronic database is further restricted by the use of Common Access Cards in order to access the excel spreadsheet.

RETENTION AND DISPOSAL:

Records are destroyed 1 year after employee's participation in the program ends or destroyed when superseded or obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Specialist (Employee Relations), Employee Relations and Work Life Division, Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, MSC 6201, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Human Resources Specialist (Employee Relations), Employee Relations and Work Life Division, Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, MSC 6201, Fort Belvoir, VA 22060–6201.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Human Resources Specialist (Employee Relations), Employee Relations and Work Life Division, Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, MSC 6201, Fort Belvoir, VA 22060–6201.

Individuals must supply their full name, address, and a telephone number where the requester can be contacted and the DTRA detachment or Enterprise/Staff Office where employed at the time they requested to participate in the DTRA Telework Program.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 318, or may be obtained from the Human Resources Specialist (Employee Relations), Employee Relations and Work Life Division, Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, MSC 6201, Fort Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

Data is supplied by telework participants and their supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–4712 Filed 3–7–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[USN–2008–0013]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Department of Navy proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on April 9, 2008, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Mrs. Doris Lama, Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on February 29, 2008, to the House Committee on Government Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

March 4, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N12308–1

SYSTEM NAME:

Navy Fleet and Family Readiness (F&FR) Internship Program

SYSTEM LOCATION:

For outside the continental United States, system is located at Navy Installations Command (N947), 5720 Integrity Drive, Bldg. 457, Millington, TN 38055–6540.

For continental United States, system is located at organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy F&FR Internship Program applicants and selectees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, contact address, phone number and e-mail address, educational information-university, major/minor, grade point average, advisor, advisor's contact phone number and e-mail address, work/volunteer experience, certifications/skills/hobbies, references, and official university transcripts from all program applicants. Additional information from selectees for producing passport application documents, travel orders, area security clearances, accommodation and travel reservations, voluntary service agreements, electronic funds transfers and correspondence: Birth location, birth date, citizenship, gender, height,

weight, hair color, eye color, emergency point of contact name, emergency point of contact relation, emergency point of contact address, emergency point of contact phone number, emergency point of contact e-mail address, Social Security Number (SSN), driver's license state, driver's license number, driver's license issue and expiration dates, U.S. passport number, U.S. passport issue and expiration dates, bank name, bank routing number, bank account number, type of bank account, name on bank account, medical statement, proof of insurance, background check and fingerprints for Child & Youth interns, and performance evaluation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 1588, Authority to Accept Certain Voluntary Services; and E.O. 9397 (SSN).

PURPOSE(S):

To select and place student interns at host installations and for local in-processing. To prepare all required documents and reservations associated with placing student interns and getting them to their internship locations, such as preparing passport application documents, submitting background checks, making travel and accommodation reservations, preparing travel orders, and securing area clearances. To supervise and monitor performance of student interns and to track overall program satisfaction and results.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records/databases and manual records.

RETRIEVABILITY:

Name, internship semester/year and internship location.

SAFEGUARDS:

Manual records are maintained in monitored or controlled areas accessible only to authorized personnel. Building and rooms are locked outside regular working hours. Automated records are maintained in computer files and a database with limited access only to personnel with a need to know. Access to individual computers is controlled by Common Access Card (CAC) and password.

RETENTION AND DISPOSAL:

Information from applicants not selected are destroyed upon the start of the semester/year for which the individual applied.

Full records are kept for three years after an individual completes their internship, then destroyed except for the following:

No-fee passports are kept until they expire (up to five years), then destroyed. If an individual gains employment that would require or authorize them to obtain a no-fee passport prior to its expiration, it will be turned over at their request.

Placement information, contact information and post-internship evaluations are kept indefinitely for historical and analytical purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: Commander, Navy Installations Command (N947), 5720 Integrity Drive, Bldg 457, Millington TN 38055–6540.

Record Holders: Commander, Navy Installations Command (N947), 5720 Integrity Drive, Bldg 457, Millington TN 38055–6540; and/or commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Navy Installations Command (N947), 5720 Integrity Drive, Bldg 457, Millington TN 38055–6540 for internships outside the continental United States. For internships in the continental United States, written inquiries should be made to the appropriate Navy activity concerned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

The request should be signed and include proof of identity, full name, dates and location of internship, and a complete mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Commander, Navy Installations Command (N947), 5720 Integrity Drive, Bldg 457, Millington TN 38055–6540 for internships outside the continental United States. For internships in the continental United States, written inquiries should be made to the appropriate Navy activity concerned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

The request should be signed and include proof of identity, full name, dates and location of internship, and a complete mailing address.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; educational institutions; state and local authorities; and general correspondence concerning the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–4728 Filed 3–5–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[USN–2008–0012]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Department of Navy proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on April 9, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Mrs. Doris Lama, Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on February 29, 2008, to the House Committee on Government Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

March 4, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N12300–2

SYSTEM NAME:

Joint Employment Management System (JEMS).

SYSTEM LOCATION:

Web based tool at *www.jemsjobs.com* is maintained by JEMS, Navy Region Hawaii, 1025 Quincy Ave., Suite 100, Pearl Harbor, HI 96860–4512.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Job Seekers: Active duty personnel, reservists, retirees, dependents, and civilian employees who are subject to reduction in force and are seeking employment opportunities in Hawaii.

Employers: Businesses who have job openings in Hawaii.

CATEGORIES OF RECORDS IN THE SYSTEM:

Job Seeker: Name; home addresses; home, business, and/or cell telephone numbers; applicant generated number; e-mail address; military/civilian status; branch of service; pay rate; command/duty station; sponsor's name; U.S. Citizen; job categories; job search areas; skills check list; resume; employment resource center; employment consultant; client status; application date; last review date; last login date; expiration date; client login name; open date; close date; renewal date; action; hired salary; login count; and remarks.

Employer: Company name; company identification number; point of contact name; e-mail address; login name; business address; phone and fax numbers; company Web site; job Web site; parent company name; application procedures; job locations; type of industry; company alias, company status; status date; job update method; company add date; first job listed; last job listed; job fair invitation; contact log; and job listings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy.

PURPOSE(S):

To provide job resources to individuals coming to the high cost area of Hawaii by expanding and enhancing employment assistance services and sponsoring an annual job fair.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Web based commercial server and paper records.

RETRIEVABILITY:

Job Seeker: Name or applicant identification number.

Company: Company name or company identification number.

SAFEGUARDS:

File/database servers are located in locked rooms and access is restricted to authorized persons only. Information is encrypted, compartmentalized, password protected and restricted to a limited number of authorized government personnel having a need-to-know. Manual and electronic records are restricted to a limited number of authorized government personnel having a need-to-know.

RETENTION AND DISPOSAL:

Job Seekers records are deleted from the program two years after their record is closed.

Employer records are deleted from the program when the business/organization/agency goes out of business or no longer offers employment opportunities.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: Joint Project Advisory Board, JEMS, Commander, Navy Region Hawaii, 1025 Quincy Ave., Suite 100, Pearl Harbor, HI 96860–4512.

Record Holder: JEMS, Commander, Navy Region Hawaii, 1025 Quincy Ave., Suite 100, Pearl Harbor, HI 96860–4512.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to JEMS, Navy Region Hawaii, 1025 Quincy Ave., Suite 100, Pearl Harbor, HI 96860–4512.

The request should be signed and include the requester's full name, login name, e-mail address and a complete mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to JEMS, Navy Region Hawaii, 1025 Quincy Ave, Suite 100, Pearl Harbor, HI 96860–4512.

The request should be signed and include the requester's full name, login name, e-mail address and a complete mailing address.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; employers; and Web site.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–4734 Filed 3–7–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Notice of Proposed Solicitation for Cooperative Agreement Applications

AGENCY: Defense Logistics Agency, DOD.

ACTION: Proposed solicitation for cost sharing cooperative agreement applications.

SUMMARY: On March 18, 2003, the Defense Logistics Agency (DLA) issued a solicitation for cooperative agreement applications (SCAA) to assist state and local governments and other nonprofit eligible entities in establishing or maintaining procurement technical

assistance centers (PTACs) pursuant to chapter 142, title 10, United States Code. These centers help business firms market their products and service to the Department of Defense (DoD), other federal agencies, and state and/or local government agencies. Cooperative agreement awards made as a result of applications submitted in response to this solicitation contained provisions for the award of additional option awards through 2007. DLA now intends to issue another solicitation as a follow-on action to the March 18, 2003, SCAA in order to maintain continuity of the Procurement Technical Assistance Program. This solicitation, when issued, will govern the submission of applications for calendar year 2008, and will provide for option period awards for 2009 and 2010. This proposed SCAA, which contains a number of changes from the March 18, 2003 SCAA, can be found on-line at *http://www.dla.mil/db/draft2008scaa.pdf* and is currently available for review. Printed copies are not available for distribution.

You are invited to submit written comments concerning this proposed SCAA to: Headquarters, Defense Logistics Agency, Office of Small Business Programs, 8725 John J. Kingman Road, Suite 1127, Ft. Belvoir, VA 22060–6221. Attn: Grants Officer.

All comments must be received by March 26, 2008, in order for them to be considered. DLA intends to post the finalized SCAA on the Internet in early April 2008. A future notice to be published in Grants.gov will announce this posting along with details on how to submit applications.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Little at (703) 767–1664.

Peg A. Meehan,

Director, Office of Small Business Programs.

[FR Doc. E8–4465 Filed 3–7–08; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 9, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 4, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: High School Longitudinal Study of 2009 (HSLS:09).

Frequency: One time.

Affected Public: Individuals or household; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,923.

Burden Hours: 1,985.

Abstract: This is a request for clearance for the field test and full scale High School Longitudinal Study of 2009 (HSLS:09). The HSLS:09 is the most recent installment in the series of NCES' nationally representative longitudinal studies of high school students. The HSLS:09 will assess students in math and science during the fall of their 9th grade year and again in the spring of most participating students' 11th grade year. The study will also survey students, their parents, teachers, guidance counselors, and school administrators twice during the secondary school years and follow students into their postsecondary years. The study will focus on how students navigate the transition between high school and the postsecondary world; what courses, majors (or first job), and careers students decide to pursue, when, why, and how.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3636. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–4627 Filed 3–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 9, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested

Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 4, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Extension.

Title: Evaluation of the Impact of Teacher Induction Programs.

Frequency: On Occasion; Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 8,555.

Burden Hours: 3,066.

Abstract: The purpose of the Evaluation of the Impact of Teacher Induction Programs is to evaluate the impact of comprehensive teacher induction programs on teacher retention, classroom practices, and student achievement. The evaluation employs a random assignment design to compare the outcomes of the teachers who are provided with a comprehensive induction program with the outcomes of teachers who receive their district's normal induction program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3635. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–4628 Filed 3–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 9, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 4, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Tech-Prep Demonstration Grants.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 3,200.

Abstract: Section 207 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Pub. L. 105–332) authorizes grants to consortia to carry out tech-prep education programs that involve the location of a secondary school on the campus of a community college. This collection solicits applications for grant funding from eligible applicants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3617. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–4630 Filed 3–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NOS.: 84.038, 84.033, and 84.007]

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

ACTION: Notice of the 2008–2009 award year deadline dates for the campus-based programs.

SUMMARY: The Secretary announces the 2008–2009 award year deadline dates for the submission of requests and documents from postsecondary institutions for the campus-based programs.

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs are collectively known as the campus-based programs.

The Federal Perkins Loan Program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The FWS Program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The FSEOG Program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its ''Dear Colleague'' letters, the Department will continue to provide additional information for the individual deadline dates listed, via the Information for Financial Aid Professionals (IFAP) Web site at *http://www.ifap.ed.gov.*

Deadline Dates: The following table provides the 2008–2009 award year deadline dates for the submission of applications, reports, and waiver requests for the campus-based programs. Institutions must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

2008–2009 AWARD YEAR DEADLINE DATES

What does an institution submit?	How is it submitted?	What is the deadline for submission?
1. The Campus-Based Reallocation Form designated for the return of 2007–2008 funds and the request of supplemental FWS funds for the 2008–2009 award year.	The Reallocation Form must be submitted electronically via the Internet and is located in the ''Setup'' section of the FISAP on the Web at: *(http://www.cbfisap.ed.gov.)*.	August 22, 2008.
2. The 2007–2008 Fiscal Operations Report and 2009–2010 Application to Participate (FISAP).	The FISAP is located on the Internet at the following Web site: *(http://www.cbfisap.ed.gov.)*. The FISAP must be submitted electronically via the Internet, and the FISAP's signature page must be mailed to: FISAP Administrator, 2020 Company, LLC, 3110 Fairview Park Drive, Suite 950, Falls Church, VA 22042.	October 1, 2008.
3. The Work-Colleges Program Report of 2007–2008 award year expenditures.	The Work-Colleges Program Report can be found in the ''Setup'' section of the FISAP on the Web at: *(http://www.cbfisap.ed.gov.)*. The report must be submitted electronically via the Internet, and a printed copy with an original signature must be submitted by one of the following methods: Hand deliver to: United States Department of Education, Federal Student Aid, Campus-Based Systems and Operations Division, 830 First Street, NE., Room 63B3 ATTN: Work-Colleges Coordinator, Washington, DC 20002, or Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	October 1, 2008.
4. The 2007–2008 FISAP Edit Corrections and Perkins Cash on Hand Update.	The FISAP is located on the Internet at the following Web site: *(http://www.cbfisap.ed.gov.)*. The FISAP Edit Corrections and Perkins Cash on Hand Update must be submitted electronically via the Internet.	December 15, 2008.
5. A request for a waiver of the 2009–2010 award year penalty for the underuse of 2007–2008 award year funds.	The request for a waiver can be found in Part II, Section C of the FISAP on the Web at: *(http://www.cbfisap.ed.gov.)*. The request and justification must be submitted electronically via the Internet.	February 13, 2009.

2008–2009 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	How is it submitted?	What is the deadline for submission?
6. The Institutional Application and Agreement for Participation in the Work-Colleges Program for the 2009–2010 award year.	The Institutional Application and Agreement for Participation in the Work-Colleges Program can be found in the ''Setup'' section of the FISAP on the Web at: *(http://www.cbfisap.ed.gov.)*. The application and agreement must be submitted electronically via the Internet, and a printed copy with original signature must be submitted by one of the following methods: Hand deliver to: United States Department of Education, Federal Student Aid, Campus-Based Systems and Operations Division, 830 First Street, NE., Room 63B3 ATTN: Work-Colleges Coordinator, Washington, DC 20002, or Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	March 13, 2009.
7. A request for a waiver of the FWS Community Service Expenditure Requirement for the 2009–2010 award year.	The FWS Community Service waiver request can be found in the ''Setup'' section of the FISAP on the Web at: *(http://www.cbfisap.ed.gov.)*. The request and justification must be submitted electronically via the Internet.	April 24, 2009.

Note:
• The deadline for electronic submissions is 11:59 p.m. (Washington, DC time) on the applicable deadline date. Transmissions must be completed and accepted by 12 midnight to meet the deadline.
• Paper documents that are sent through the U.S. Postal Service must be postmarked by the applicable deadline date.
• Paper documents that are hand delivered by a commercial courier must be received no later than 4:30 p.m. (Washington, DC time) on the applicable deadline date.

Proof of Mailing or Hand Delivery of Paper Documents

If you submit paper documents when permitted by mail or by hand delivery, we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If the paper documents are sent through the U.S. Postal Service, we do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. All institutions are encouraged to use certified or at least first-class mail.

The Department accepts hand deliveries between 8 a.m. and 4:30 p.m., Washington, DC time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in a specific ''Dear Colleague'' letter, which is posted on the Department's IFAP Web site (*http://www.ifap.ed.gov*) at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Programs, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) Governmentwide Debarment and Suspension (Nonprocurement), 34 CFR part 85.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Sherlene McIntosh, Director of Campus-Based Systems and Operations Division, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, Room 64A3, Washington, DC 20202–5453. Telephone: (202) 377–3242 or via the Internet: *sherlene.mcintosh@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: March 5, 2008.

Lawrence A. Warder,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. E8–4766 Filed 3–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.069]

Federal Student Aid; Leveraging Educational Assistance Partnership and Special Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice of the deadline dates for receipt of State applications for Award Year 2008–2009 funds.

SUMMARY: This is a notice of deadline dates for receipt of State applications for Award Year 2008–2009 funds under the Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Educational Assistance Partnership (SLEAP) programs.

The LEAP and SLEAP programs, authorized under title IV, part A, subpart 4 of the Higher Education Act of 1965, as amended (HEA), assist States in providing aid to students with substantial financial need to help them pay for their postsecondary education costs through matching formula grants to States. Under section 415C(a) of the HEA, a State must submit an application to participate in the LEAP and SLEAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Department has approved, a different State agency to administer the LEAP Program.

DATES: To ensure funding under the LEAP and SLEAP programs for Award Year 2008–2009, a State must meet the applicable deadline date. Applications submitted electronically must be received by 11:59 p.m. (Washington, DC time) May 30, 2008. Paper applications must be received by May 23, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners Services, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Room 111G5, Washington, DC 20202. Telephone: (202) 377–3304.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Only the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands may submit an application for funding under the LEAP and SLEAP programs.

State allotments for each award year are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State also may request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In Award Year 2007–2008, 49 States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands received funds under the LEAP Program. Additionally, 43 States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands received funds under the SLEAP Program.

Applications Submitted Electronically: Financial Partners Services within Federal Student Aid has automated the LEAP and SLEAP application process in the Financial Management System (FMS). Applicants can use the web-based form (Form 1288–E OMB 1845–0028) that is available on the FMS LEAP on-line system at the following Internet address: *http://fsa-fms.ed.gov*.

Paper Applications Delivered by Mail: States or territories may request a paper version of the application (Form 1288 OMB 1845–0028) by contacting Mr. Greg Gerrans, LEAP Program Manager, at (202) 377–3304 or by e-mail: *greg.gerrans@ed.gov*. The form will be mailed to you.

A paper application sent by mail must be addressed to: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners Services, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Room 111G5, Washington, DC 20202.

The Department of Education encourages applicants that are completing a paper application to use certified or at least first-class mail when sending the application by mail to the Department. The Department must receive paper applications that are mailed no later than May 23, 2008.

Paper Applications Delivered by Hand: Paper applications that are hand-delivered must be delivered to Mr. Greg Gerrans, LEAP Program Manager, Financial Partners Services, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Room 111G5, Washington, DC 20002. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

Paper applications that are hand-delivered must be received by 4:30 p.m. (Washington, DC time) on May 23, 2008.

Applicable Regulations: The following regulations are applicable to the LEAP and SLEAP programs:

(1) The LEAP and SLEAP Program regulations in 34 CFR part 692.

(2) The Student Assistance General Provisions in 34 CFR part 668.

(3) The Regulations Governing Institutional Eligibility in 34 CFR part 600.

(4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)), part 85 (Governmentwide Debarment and Suspension (Nonprocurement)), part 86 (Drug and Alcohol Abuse Prevention), and part 99 (Family Educational Rights and Privacy).

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1070c *et seq.*

Dated: March 5, 2008.

Lawrence A. Warder,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. E8–4767 Filed 3–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Office of Postsecondary Education; Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH), Developing Hispanic-Serving Institutions (Title V–HSI) Programs, and the Asian American and Native American Pacific Islander-Serving Institutions (CCRAA–AANAPISI), and Hispanic-Serving Institutions Programs (CCRAA–HSI) under the College Cost Reduction and Access Act of 2007, Public Law 110–84 (CCRAA); Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 2008.

Purpose of Programs: Under the SIP, TCCU, and ANNH programs (Title III, Part A programs), which are all authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education (IHEs or institutions) are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, IHEs are eligible to apply for grants under the Title V–HSI program, authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements. In addition, under the CCRAA, institutions applying for grants under the CCRAA–AANAPISI or CCRAA–HSI programs must be eligible institutions, as defined in section 312(b) and section 502(a)(2) of the HEA, respectively.

An institution that is designated as an eligible institution under the Title III, Part A, Title V–HSI and CCRAA–AANAPISI and CCRAA–HSI programs may also receive a waiver of certain non-Federal cost-share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS) and the Undergraduate International Studies and Foreign Language (UISFL) programs. The FSEOG, FWS, and SSS programs are authorized under Title IV of the HEA; the UISFL program is authorized under Title VI of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III, Part A, Title V–HSI, CCRAA–AANAPISI or CCRAA–HSI programs.

Special Note: To qualify as an eligible institution under the Title III, Part A, Title V–HSI, CCRAA–AANAPISI or CCRAA–HSI programs, your institution must satisfy several criteria, including one related to needy student enrollment and one related to average educational and general (E&G) expenditures for a particular base year. The most recent data available for E&G expenditures are for base year 2005–2006. In order to award FY 2008 grants in a timely manner, we will use the most recent data available. Therefore, we use E&G expenditure threshold data from the base year 2005–2006. In completing your eligibility application, please use E&G expenditure data from the base year 2005–2006.

If you are designated as an eligible institution and you do not receive a new award under the Title III, Part A, Title V–HSI, CCRAA–AANAPISI or CCRAA–HSI programs in FY 2008, your eligibility for the non-Federal cost-share waiver under the FSEOG, the FWS, the SSS, or the UISFL programs is valid for five consecutive years. You will not need to reapply for eligibility until 2013, unless you wish to apply for a new Title III, Part A, Title V–HSI, CCRAA–AANAPISI or CCRAA–HSI grant. All institutions (including those designated as TCCU and ANNH institutions) that are not designated as eligible institutions and are interested in applying for a FY 2008 new grant or requesting a waiver of the non-Federal cost share, must apply for eligibility designation in FY 2008. Institutions applying for grants under the Native American-Serving Nontribal Institutions Program and the Predominantly Black Institutions Program authorized by the CCRAA do not have to meet these eligibility requirements and do not have to submit the application described in this notice.

Eligible Applicants: To qualify as an eligible institution under the Title III, Part A, Title V–HSI, CCRAA–AANAPISI or CCRAA–HSI programs, an accredited institution must, among other requirements, have an enrollment of needy students, and its average E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction.

The complete eligibility requirements for the Title III, Part A programs are found in 34 CFR 607.2 through 607.5. These regulations may be accessed at the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_02/34cfr607_02.html.*

The complete eligibility requirements for the Title V–HSI program are found in 34 CFR 606.2 through 34 CFR 606.5. These regulations may be accessed at the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html.*

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have an enrollment of needy students if (1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2005–2006 must be more than the median for its category of comparable institutions provided in the 2005–2006 Median Pell Grant and Average E&G Expenditures per FTE Student table in this notice.

Educational and General Expenditures per FTE Student: An institution should compare its 2005–2006 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the 2005–2006 Median Pell Grant and Average E&G Expenditures per FTE Student table in this notice. If the institution's average E&G expenditures for the 2005–2006 base year are less than the average for its category of comparable institutions, the institution meets this eligibility requirement.

An institution's average E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support including library expenditures, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages for the base year 2005–2006 and the relevant average E&G expenditures per FTE student for the base year 2005–2006 for the four categories of comparable institutions:

Type of institution	2005–2006 median Pell Grant percentage	2005–2006 Average E&G expenditures per FTE student
2-year Public Institutions	25.1	$9,956
2-year Non-profit Private Institutions	36.7	21,733
4-year Public Institutions	24.6	24,690
4-year Non-profit Private Institutions	25.0	38,811

Waiver Information: IHEs that are unable to meet the needy student enrollment requirement or the average E&G expenditures requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d). Institutions requesting a waiver of the needy student enrollment requirement or the average E&G expenditures requirement must include in their application detailed information supporting the waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to waive the needy student requirement, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refer to ''low-income'' students or families. The regulations define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level, as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c).

For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

2005 ANNUAL LOW-INCOME LEVELS

Size of family unit	Family income for the 48 contiguous states, DC, and outlying jurisdictions	Family income for Alaska	Family income for Hawaii
1	$14,355	$17,925	$16,515
2	19,245	24,045	22,140
3	24,135	30,165	27,765
4	29,025	36,285	33,390
5	33,915	42,405	39,015
6	38,805	48,525	44,640
7	43,695	54,645	50,265
8	48,585	60,765	55,890

Note: The 2005 annual low-income levels are being used because those are the amounts that apply to the family income reported by students enrolled for the Fall 2005 semester. For family units with more than eight members, add the following amount for each additional family member: $4,890 for the contiguous 48 States, the District of Columbia and outlying jurisdictions; $6,120 for Alaska; and $5,625 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The poverty guidelines were published by the U.S. Department of Health and Human Services in the **Federal Register** on February 18, 2005 (70 FR 8373).

The information about ''metropolitan statistical areas'' referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained by requesting the Metropolitan Statistical Areas, 1999 publication, order number PB99–501538, from the National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, VA 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applications Available: March 10, 2008.

Deadline for Transmittal of Applications: April 9, 2008 for an applicant institution that wishes to be designated as eligible to apply for a FY 2008 new grant under the Title III, Part A, Title V–HSI, CCRAA–AANAPISI or CCRAA–HSI programs; and April 30, 2008 for an applicant institution that wishes to apply only for cost-sharing waivers under the FSEOG, FWS, SSS, or UISFL programs.

Electronic Submission of Applications:

Applications for designation of eligibility must be submitted electronically using the following Web site: *http://opeweb.ed.gov/title3and5.*

To enter the Web site, you must use your institution's unique 8-digit identifier, i.e., your Office of Postsecondary Education Identification Number (OPE ID number). Your business office or student financial aid office should have the OPE ID Number. If they do not, contact the Department, using the e-mail addresses of the contact persons listed in this notice under *For Applications and Further Information Contact.*

You will find detailed instructions for completing the application form electronically under the ''eligibility 2008'' link at either of the following Web sites: *http://www.ed.gov/programs/iduestitle3a/index.html* or *http://www.ed.gov/hsi.*

If your institution is unable to meet the needy student enrollment requirement or the average E&G expenditure requirement and wishes to request a waiver of one or both of these requirements, you must complete your designation application form electronically and transmit your waiver request narrative document from the following Web site: *http://opeweb.ed.gov/title3and5.*

Exception to Electronic Submission Requirement: You may qualify for an exception to the electronic submission requirement and may submit your application in paper format, if you are unable to submit an application electronically because—

- You do not have access to the Internet; or

• You do not have the capacity to upload documents to the Web site; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Mrs. Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., Room 6020, Washington, DC 20006–8513. Fax: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the application, on or before the application deadline date, to the Department at the following address:

By mail through the U.S. Postal Service or commercial carrier: Mrs. Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., Room 6020, Washington, DC 20006–8513.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the application, on or before the application deadline date, to the Department at the following address: Mrs. Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., Room 6020, Washington, DC 20006–8513.

Hand delivered applications will be accepted daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for the Title III, Part A programs in 34 CFR part 607, and for the Title V-HSI program in 34 CFR part 606.

Note: There are no program-specific regulations for the CCRAA–HSI and CCRAA–AANAPISI programs. Accordingly, we encourage each potential applicant to read the CCRAA, the authorizing statute for these programs. A copy of the CCRAA is available at the following Web site *http://www.ed.gov/about/offices/list/ope/idues/index.html.*

For Applications and Further Information Contact: Kelley Harris or Carnisia Proctor, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., Room 6033, Request for Eligibility Designation, Washington, DC 20202–8513.

You may contact these individuals at the following e-mail addresses or phone numbers:

Kelley.Harris@ed.gov, 202–219–7083.
Carnisia.Proctor@ed.gov, 202–502–7606.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact persons listed in this section.

Electronic Access to This Document

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Program Authority: 20 U.S.C. 1057–1059d, 1101–1103g and Public Law 110–84.

Dated: March 5, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8–4765 Filed 3–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 5, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP97–81–046.

Applicants: Kinder Morgan Interstate Gas Trans. LLC.

Description: Kinder Morgan Interstate Gas Transmission LLC submits Twentieth Revised Sheet 4G.01 of its FERC Gas Tariff, Fourth Revised Volume 1–A.

Filed Date: 02/29/2008.

Accession Number: 20080304–0036.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP99–176–154.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America submits Amendments to the Firm Transportation and Storage Negotiated Rate Agreement and to the related Transportation Rate Schedule FTS Agreement etc under RP99–176.

Filed Date: 02/29/2008.

Accession Number: 20080304–0034.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP99–176–155.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits Second Revised Sheet 26Q *et al.* to its FERC Gas Tariff, Six Revised Volume 1, to be effective April 1, 2008.

Filed Date: 03/03/2008.

Accession Number: 20080304–0272.

Comment Date: 5 p.m. Eastern Time on Monday, March 17, 2008.

Docket Numbers: RP02–361–068.

Applicants: Gulfstream Natural Gas System, L.L.C.

Description: Gulfstream Natural Gas System, LLC submits Original Sheet 8.02h to its FERC Gas Tariff, Original Volume 1, reflecting an effective date of March 1, 2008.

Filed Date: 03/03/2008.

Accession Number: 20080304–0240.

Comment Date: 5 p.m. Eastern Time on Monday, March 17, 2008.

Docket Numbers: RP07–120–002, RP07–145–001.

Applicants: Stingray Pipeline Company, L.L.C.

Description: Stingray Pipeline Company, LLC submits revised agreements in compliance with the Commission's Order issued on November 29, 2007.

Filed Date: 02/29/2008.

Accession Number: 20080304–0033.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–237–000.

Applicants: Southwest Gas Storage Company.

Description: Southwest Gas Storage Company submits Twenty-First Revised Sheet No. 5, to its FERC Gas Tariff, First Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080303–0120.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–238–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Co submits its Twenty-Fifth Revised Sheet 19 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0153.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–239–000.

Applicants: TransColorado Gas Transmission Company L.

Description: TransColorado Gas Transmission Company LLC submits its annual Fuel Gas Reimbursement Percentage Report for the year ended 12/31/07.

Filed Date: 02/29/2008.

Accession Number: 20080304–0023.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–240–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits Original Sheet 10A *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0022.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–241–000.

Applicants: TransColorado Gas Transmission Company L.

Description: TransColorado Gas Transmission Company LLC submits First Revised Sheet 279 to its FERC Gas Tariff, Second Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0030.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–242–000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits its FL&U Percentage Adjustment Report for the year ended 12/31/07.

Filed Date: 02/29/2008.

Accession Number: 20080304–0029.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–243–000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company LLC submits Sixteenth Revised Sheet 10 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0028.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–244–000.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corporation submits Eighty-Sixth Revised Sheet 25 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0027.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–245–000.

Applicants: Central Kentucky Transmission Company.

Description: Central Kentucky Transmission Company submits Fifth Revised Sheet 6 to its FERC Gas Tariff, Original Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0026.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–246–000.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corporation submits Eighteenth Revised Sheet 44 to its FERC Gas Tariff, Second Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0025.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–247–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Ozark Gas Transmission LLC submits Seventh Revised Sheet 13 *et al.* to its FERC Gas Tariff, Original Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0024.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–248–000.

Applicants: Quest Pipelines (KPC).

Description: Quest Pipelines (KPC) submits its First Revised Sheet 21 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0040.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–249–000.

Applicants: Bluewater Gas Storage, LLC.

Description: Bluewater Gas Storage, LLC submits its First Revised Sheet 1 *et al.* to its FERC Gas Tariff, Original Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0039.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–250–000.

Applicants: Transcontinental Gas Pipe Line Corp.

Description: Transcontinental Gas Pipe Line Corp submits its Twenty-Eighth Revised Sheet 29 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0038.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–251–000.

Applicants: Transcontinental Gas Pipe Line Corp.

Description: Transcontinental Gas Pipe Line Corporation submits Fifty-

Second Revised Sheet 27 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to be effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0037.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–252–000.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Co submits its Twenty-Second Revised Sheet 5B to its FERC Gas Tariff, First Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0041.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–253–000.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits Thirteenth Revised Sheet 5C, to its FERC Gas Tariff, First Revised Volume 1, to become effective April 1, 2008.

Filed Date: 02/29/2008.

Accession Number: 20080304–0031.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–254–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits 112th Revised Sheet 9 to its FERC Gas Tariff, Fourth Revised Volume 1, to become effective March 1, 2008 under RP08–254.

Filed Date: 02/29/2008.

Accession Number: 20080304–0032.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 12, 2008.

Docket Numbers: RP08–255–000.

Applicants: Arcadia Gas Storage, LLC.

Description: Arcadia Gas Storage, LLC submits its advance notification of construction facilities.

Filed Date: 03/03/2008.

Accession Number: 20080304–0267.

Comment Date: 5 p.m. Eastern Time on Monday, March 17, 2008.

Docket Numbers: RP08–256–000.

Applicants: TransColorado Gas Transmission Company LLC.

Description: TransColorado Gas Transmission Co, LLC submits First Revised Sheet 1 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to become effective April 1, 2008.

Filed Date: 03/03/2008.

Accession Number: 20080304–0239.

Comment Date: 5 p.m. Eastern Time on Monday, March 17, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–4632 Filed 3–7–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0153; FRL–8540–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Protection of Stratospheric Ozone: Critical Use Exemption From the Phaseout of Methyl Bromide (Applications, Recordkeeping, and Periodic Reporting) (Renewal); EPA ICR No. 2031.03, OMB Control No. 2060–0482

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, 2031.02, is scheduled to expire on August 31, 2008. In addition, EPA is also planning to renew and transfer the burden from EPA ICRs 2179.02 and 2179.03 into this ICR. Those ICRs are scheduled to expire on August 31, 2008, and November 30, 2008, respectively. Thus, EPA seeks to create a single comprehensive ICR for the methyl bromide CUE program. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 9, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0153 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* EPA–HQ–OAR–2008–0153, Environmental Protection Agency, Mailcode: 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA–HQ–OAR–2008–0153, Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, 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–OAR–2008–0153. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at: *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Jeremy Arling, Stratospheric Protection Division, Office of Atmospheric Programs, (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9055; fax number: (202) 343–2338; e-mail address: *arling.jeremy@epa.gov.* You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at: *http://www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0153, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are producers, importers, distributors, and custom applicators of methyl bromide, organizations, consortia, and associations of methyl bromide users, as well as individual methyl bromide users.

Title: Agency Information Collection Activities; Proposed Collection; Comment Request; Protection of Stratospheric Ozone: Critical Use Exemption from the Phaseout of Methyl Bromide (Applications, Recordkeeping, and Periodic Reporting) (Renewal).

ICR numbers: EPA ICR No. 2031.03, OMB Control No. 2060–0482.

ICR status: EPA ICR 2031.02 is currently scheduled to expire on August 31, 2008. In addition, EPA ICR 2179.02 and 2179.03 are scheduled to expire on August 31, 2008, and November 30, 2008, respectively. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA is seeking to renew EPA ICR 2031.02 which allows EPA to collect CUE applications from regulated entities on an annual basis. EPA is also seeking to renew and transfer the burden from EPA ICR 2179.02 and 2179.03 which require the submission of data from regulated industries to the EPA and require recordkeeping of key documents to ensure compliance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and the CAA.

Entities applying for this exemption are asked to submit to EPA applications with necessary data to evaluate the need for a critical use exemption. This information collection is conducted to meet U.S. obligations under Article 2H of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The information collection request is required to obtain a benefit under section 604(d)(6) of the CAA, added by section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277; October 21, 1998).

Since 2002, entities have applied to EPA for a critical use exemption that would allow for the continued production and import of methyl bromide after the phaseout in January 2005. These exemptions are for consumption only in those agricultural sectors that have demonstrated that there are no technically or economically feasible alternatives to methyl bromide. The applications are rigorously assessed and analyzed by EPA staff, including experts from the Office of Pesticide Programs. On an annual basis, EPA uses the data submitted by end users to create a nomination of critical uses which the U.S. Government submits to the Protocol's Ozone Secretariat for review by an international panel of experts and advisory bodies. These advisory bodies include the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The uses authorized internationally by the Parties to the Protocol are made available in the U.S. on an annual basis.

The applications will enable EPA to:

1. Maintain consistency with the Protocol by supporting critical use nominations to the Parties to the Protocol, in accordance with paragraph 2 of Decision IX/6 of the Protocol;

2. Ensure that critical use exemptions comply with section 604(d)(6);

3. Provide EPA with necessary data to evaluate the technical and economic feasibility of methyl bromide alternatives in the circumstance of the specific use, as presented in an application for a critical use exemption;

The reported data will enable EPA to:

1. Ensure that critical use exemptions comply with section 604(d)(6);

2. Maintain compliance with the Protocol requirements for annual data submission on the production of ozone depleting substances;

3. Analyze technical use data to ensure that exemptions are used in accordance with requirements included in the annual authorization rulemakings.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, Subpart b, and will be disclosed only if EPA determines that the information is not entitled to confidential treatment. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203). Individual reporting data may be claimed as sensitive and will be treated as confidential information in accordance with procedures outlined in 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual application, reporting, and recordkeeping burden is as follows: 75 applicants to the critical use exemption program at 2,925 hours per year; 4 producers and importers at a total of 80 hours per year (quarterly reporting); 100 distributors and applicators at 1287.5 hours per year (annual reporting); and 2,000 end users at 625 hours per year (periodic certification of purchases of critical use methyl bromide at the time of each purchase). The total industry burden is therefore 4917.5 hours per year.

The annual public application burden for this collection of information is estimated to average 39 hours per response (2925 hours divided by 75 responses). The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.64 hours per response (1992.5 hours divided by 3,098 responses).

Overall, the total annual public burden (application, reporting, and recordkeeping) for this collection of information is estimated to average 1.6 hours per response (4917.5 hours divided by 3,173 responses).

The total annual labor cost burden associated with information collection request is $993,622. EPA estimates the costs as follows: Application costs totaling $295,016 per year, recordkeeping and reporting costs totaling $631,787 per year, and self certification by producers, importers, distributors, and end users costing $66,820 per year. EPA estimates the capital costs to be $0.

Are There Changes in the Estimates From the Last Approval?

There is a decrease of 82.5 hours in the total estimated respondent burden compared with that identified in the EPA ICR 2031.02 which is currently approved by OMB. This estimate for total burden hours includes updated burden estimates from the recordkeeping and reporting ICR (EPA ICR 2179.02 and 2179.03) as well as EPA ICR 2031.02.

The reason for the decrease in burden is that the Agency has six years of experience managing the critical use exemption program which has led to efficiency and greater accuracy in estimating future burden. Over the last four years, EPA has received on average 65 applications each year, rather than the 100 estimated in the previous ICR. EPA continues to encourage users with similar circumstances to utilize grower and user organizations to aid in completion of the application, thereby reducing both the burden on applicants (particularly small businesses) and the Agency. The registration of additional alternatives since 2002 in the U.S. may also result in fewer applications received. Furthermore, stakeholders are more familiar with the critical use exemption program and have already organized associations to apply on behalf of multiple growers. Other reasons for burden reduction include the encouragement of electronic submission of applications and other data and very frequent EPA communication with methyl bromide stakeholders.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice

pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 28, 2008.

Drusilla Hufford,

Director, Stratospheric Protection Division.

[FR Doc. E8–4697 Filed 3–7–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8536–7]

Energy Policy Act of 2005 Diesel Emissions Reduction Program; State Clean Diesel Grant Program Funding Fiscal Year 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Funding for the Fiscal Year 2008 State Clean Diesel Grant Program Under the 2005 Energy Policy Act.

SUMMARY: The Energy Policy Act of 2005 (H.R. 6) signed into law on August 8, 2005 (Pub. L. 109–58) incorporates provisions to achieve significant reductions in diesel emissions. Section 793 of the Energy Policy Act of 2005 authorizes the U.S. Environmental Protection Agency (EPA) to support grant and loan programs administered by States that are designed to achieve significant reductions in diesel emissions. This program authorized in Section 793 is referred to as the State Clean Diesel Grant Program for this Notice. EPA expects to have approximately $14.8 million available in fiscal year 2008 in the form of assistance agreements to issue under the State Clean Diesel Grant Program.

DATES: In order to participate, States must notify EPA of their intent to apply to the State Clean Diesel Grant Program through a *Notice of Intent to Apply* as described in Section 6 of this Notice on or before April 24, 2008 at 11:59 p.m. Pacific Time. States must submit applications to EPA as described in Section 6 of this Notice on or before June 23, 2008 at 11:59 p.m. Pacific Time. Failure to meet these deadlines could result in ineligibility for fiscal year 2008 funding.

Contact Information: States must e-mail the *Notice of Intent to Apply* to EPA's Office of Transportation and Air Quality (OTAQ) at *cleandiesel@epa.gov* and include in the subject line ''Intent to Apply: State Clean Diesel Grant Program—[NAME OF STATE].'' States must then submit applications to the appropriate Regional Clean Diesel contact listed in this notice under Section 11.

FOR FURTHER INFORMATION CONTACT: Jennifer Keller, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Mail-Stop: 6405–J. Phone (202) 343–9541, Fax (202) 343–2803, *keller.jennifer@epa.gov.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* This document will also be available at the EPA National Clean Diesel Campaign Web site, *http://www.epa.gov/cleandiesel.* Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

SUPPLEMENTARY INFORMATION:

(1) General Information

a. What Is the Statutory Authority for the State Clean Diesel Grant Program?

The 2005 Energy Policy Act (EPAct of 2005), Public Law 109–58, signed into law August 8, 2005, authorized an annual appropriation of up to $200,000,000 under the Diesel Emissions Reduction portion of the legislation (Subtitle G—Diesel Emissions Reduction or ''DERA'') for each of fiscal years 2007 through 2011 to remain available until expended. In December 2007, Congress appropriated $49.2 million under EPAct of 2005 to help reduce harmful emissions from heavy-duty diesel engines. Section 793 of EPAct of 2005 outlines provisions for the State Clean Diesel Grant Program which includes that, ''the Administrator shall provide to States guidance for use in applying for grant or loan funds under this section.'' Per statutory requirements, thirty percent of the $49.2 million ($14.8M for FY08), is available through the State Clean Diesel Grant Program.

b. What Is the Catalog of Federal Domestic Assistance (CDFA) Number for the Diesel Emission Reduction Grants?

The number assigned to the State Clean Diesel Grant Program is Program Code 66.040.

(2) Background Information

Reducing emissions from diesel engines is one of the most important air quality challenges facing the country. Even with EPA's more stringent heavy-duty highway and non-road engine standards taking effect over the next decade, millions of diesel engines already in use will continue to emit large amounts of nitrogen oxides, particulate matter and air toxics, which contribute to serious public health problems. These emissions are linked to premature deaths, asthma attacks, lost work days, and other health impacts every year.

EPA created the National Clean Diesel Campaign (NCDC) to build on the success of its regulatory and voluntary efforts to reduce emissions from diesel engines. Through this effort, EPA is working to reduce the pollution emitted from the existing fleet by promoting a variety of cost-effective and innovative emission reduction strategies.

To date more than $50 million has been awarded to over 200 organizations to establish new clean diesel programs. Through NCDC, EPA will continue to award grants and loans to assist its eligible partners in building diesel emission reduction programs across the country to achieve public health goals. The programs outlined in EPAct of 2005 are part of NCDC's Clean Diesel Programs. Information regarding the Clean Diesel Programs can be found at *http://www.epa.gov/cleandiesel.*

There are several programs outlined in EPAct of 2005 as part of the National Clean Diesel Campaign. There are two main components of the program: A National component and a State component. A brief description is provided below.

Within the National component, 70 percent of the funds ($34.4 million FY08) are made available on a competitive basis to provide grants and low-cost revolving loans to eligible entities for the deployment of verified and certified technologies to reduce diesel emissions. This program has three separate competitions: (1) National Clean Diesel Funding Assistance Program: A competitive grant program for the deployment of EPA and/or California Air Resources Board (CARB) certified and/or verified clean diesel technologies and verified idle reduction technologies, (2) National Clean Diesel Finance Program: A competitive grant program for innovative finance mechanisms such as national low-cost revolving loans, and (3) Clean Diesel Emerging Technologies Program: A competitive grant program to deploy emerging technologies not yet verified but for which an approvable application for verification and test plan are received by EPA. States, as eligible entities, may apply to all three of the competitions above, in addition to the State Clean Diesel Grant Program.

The second component is the State Clean Diesel Grant Program. With this component, 30% of the funds ($14.8 million FY08) are made available through an allocation to States. Except where indicated, the remainder of this notice refers specifically to this component: The State Clean Diesel Grant Program. Additional information regarding the State Clean Diesel Grant Program is available at *http://www.epa.gov/cleandiesel* under the State Program section.

(3) Eligible Entities

Throughout this document, the term ''applicant,'' ''recipient,'' or ''State'' includes the 50 States. EPA presumes that the State Agency with jurisdiction over air quality will be the lead agency to receive these funds. If a State's circumstances dictate that another State agency administer the funds, then a letter from the State Governor or designee to the Administrator of EPA is required in order to certify one State Agency as the recipient of funds who has the legal and administrative authority to enter into a grant or cooperative agreement with EPA. Upon receipt, EPA will consider that State Agency the lead agency from that point forward. However, if there is a change, a new Governor's letter to the Administrator must be submitted during the renewal process and the new agency would be considered the lead agency for future grants. For fiscal year 2008, the letter to identify an alternate lead agency and provide specific contact information should be sent to the EPA Administrator at the contact information listed in Section 11 of this Notice and be received on or before April 24, 2008 at 11:59 p.m. Pacific Time.

(4) Allocation of Funds

a. How Much Funding Is Available?

In fiscal year 2008, Congress allocated $49.2 million for Subtitle G, *Diesel Emissions Reduction Program* under EPAct of 2005. For fiscal year 2008, 30 percent of these funds (approximately $14.8M) under this subtitle are for the State Clean Diesel Grant Program. The President's fiscal year 2009 budget request outlines similar levels. State Agencies that are eligible entities under the National Clean Diesel Grant and Loan Program may also apply for competitive national grants.

b. How Will Funding Be Allocated in Fiscal Year 2008?

For fiscal year 2008, EPA expects to award grants to all States for which applications are approved based on an allocation formula that is outlined in EPAct of 2005. Accordingly, for fiscal year 2008, EPA will allocate 20 percent of the funds for base level funding and reserve 10 percent of the funds for the State matching incentive. Pursuant to EPAct of 2005, funding levels for the State Clean Diesel Grant Program may change in future years, but the base allocation of funding will not be more than 20 percent of the funds available in a fiscal year.

The specific allocation methodology for the State program for fiscal year 2008 as prescribed in EPAct of 2005 Section 793(c) of Subtitle G is outlined below:

(1) Base funding (20 percent or $9.84M)

(a) If all 50 States elect to participate, then 2 percent is available for each State ($196,000).

(b) If fewer than 50 States elect to participate, then a base allocation of 2 percent plus a proportional population formula will be used. The total population of the State will be divided by the total population of all qualifying States for a fiscal year/grant cycle. The total population of qualifying States would not be determined until all qualifying States are selected. EPA will use the latest available population estimate data of the U.S. Census Bureau. This fraction of State population over total population of qualifying States is multiplied by the remaining funds from the 20 percent allocated to the qualifying States.

$$\text{State allocation} = 2\% + \left(\left(\frac{\text{population of State}}{\text{total population of all qualifying States}} \right) * \text{remaining funds } 20\% \right)$$

(2) Matching Incentive (10 percent or $4.96M)

(a) If States choose to match their entire allocation dollar for dollar, they will receive an additional 50 percent of their State base funding.

(3) Unclaimed funds from the State Clean Diesel Grant Program will revert to the National Clean Diesel Funding Assistance Program. Unclaimed funds may consist of funds from the matching incentive pool which were not matched by States and/or any funds from the base allocation portion if EPA were to provide less than 20 percent base allocation. Any funds reverting to the National Clean Diesel Funding Assistance Program will be subject to the statutory distribution requirements.

Award amounts could range from approximately $196,000 to $2,000,000 based on the number of States who apply. For examples of potential funding scenarios, see *http://www.epa.gov/cleandiesel* under the State Program section.

c. What Are the Match Requirements?

Under the State Clean Diesel Grant Program, a match is not required. However, as an incentive, States are encouraged to match the entire Federal allocation dollar for dollar. If the entire base allocation is matched dollar for dollar, States qualify for an additional 50 percent of their original allocation.

Pursuant to 40 CFR 31.24, States that choose to match the Federal allocation can use a combination of non-Federal grants or financial contributions over which the State has control from non-Federal third parties and/or through in-kind contributions that are applicable to the period to which the matching requirements apply. A matching requirement may not be met by costs borne by another Federal grant. Eligible categories for matching funds include State funds or private funds which can either be cash donations or in-kind contributions. A State may not use any Federal funds received under Subtitle G, *Diesel Emissions Reduction Program* under EPAct of 2005 as match for the State Clean Diesel Grant Program.

A recipient is legally obligated to expend any voluntary matching share included in the approved project budget. This match must be met by eligible and allowable costs as outlined in 40 CFR part 31 and is subject to the match provisions in the assistance agreement regulations. A recipient who fails to provide any matching share that is included in the approved budget would be in breach of the assistance agreement, and EPA can take enforcement actions authorized by the assistance regulations. Costs and third party in-kind contributions used to satisfy a match must be verifiable from records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. States are encouraged to submit letters of commitment from private funding secured for match as part of the State's application.

(5) Permissible Use of Funds

a. What Projects and Activities Are Allowable Under This Program?

States shall use any funds provided under the State Clean Diesel Grant Program to develop and implement Clean Diesel grant and low-cost revolving loan programs in the State as are appropriate to meet State needs and goals relating to the reduction of diesel emissions. Per EPAct of 2005 Section 793(d)(3) *Use of Funds,* a State, through a grant or loan, may fund a project that utilizes verified or certified technologies through EPA's verification or certification programs or through the California Air Resources Board's (CARB) verification or certification programs. A list of EPA verified technologies is available at *http://www.epa.gov/cleandiesel.* CARB-verified technologies may be found at *www.arb.ca.gov/diesel/verdev/verdev.htm.* In general, States may implement grant or loan programs to fund the costs of the following:

(1) A retrofit technology (including any incremental costs of a repowered or new diesel engine) that significantly reduces emissions through development and implementation of a certified engine configuration, verified technology, or emerging technology for

(a) A bus;

(b) A medium-duty truck or a heavy-duty truck;

(c) A marine engine;

(d) A locomotive; or

(e) A non-road engine or vehicle used in

—Construction;

—Handling of cargo (including at a marine port or airport);

—Agriculture;

—Mining; or

—Energy production (e.g., generator sets); or

(2) Programs or projects to reduce long-duration idling using verified technology involving a vehicle or equipment described above. A list of EPA-verified idling technologies is available at *http://www.epa.gov/cleandiesel.*

All recipients of grants made through the State's grant or loan program must comply with applicable requirements for subawards or subgrants including those contained in 40 CFR Part 31.

States cannot use subgrants or subawards to avoid requirements in EPA grant regulations for competitive procurement by using these instruments to acquire commercial services or products from for-profit organizations to carry out its assistance agreement. The nature of the transaction between the State and the subawardee or subgrantee must be consistent with the standards for distinguishing between vendor transactions and subrecipient assistance under Subpart B Section .210 of OMB Circular A–133, and the definitions of ''subaward'' at 40 CFR 30.2 or ''subgrant'' at 40 CFR 31.3, as applicable.

b. What Are Program Priorities?

Pursuant to EPAct of 2005 Section 793(d)(1), States should, to the extent practicable, provide funding to projects that, as determined by the State

(a) Maximize public health benefits;

(b) Are the most cost-effective;

(c) Serve areas

—With highest population density;

—That are poor air quality areas, including areas

i. In nonattainment or maintenance of national ambient air quality standards for a criteria pollutant;

ii. Federal or State Class I areas; or

iii. Areas with toxic air pollutant concerns;

—That receive disproportionate quantity of air pollution from diesel fleets, including truck stops, marine ports, rail yards, terminals, and distribution centers; or

—That use community-based multi-stakeholder processes to reduce toxic emissions;

(d) Include a certified engine configuration, verified technology, or emerging technology that has a long expected useful life;

(e) Will maximize the useful life of any certified engine configuration, verified technology, or emerging technology used or funding by the State;

(f) Conserve diesel fuel; and

(g) Use ultra low sulfur diesel fuel (15 parts per million or less of sulfur content) ahead of EPA's mandates (for non-road or marine projects).

c. Are There Any Funding Restrictions?

States and/or subgrantees must use a competitive process for obtaining contracts for services and products and conduct cost and price analyses to the extent required by Federal, State or local procurement requirements. All contracts and the purchase of supplies and equipment must be conducted in a manner providing free and open competition, to the maximum extent practicable. As such, applicants should refrain from mentioning specific technology manufacturers in their proposals unless they are sole source providers.

States must ensure that the costs of proposed activities are allowable according to Office of Management and Budget (OMB) Circular A–87 ''Allowable Costs.'' This should be reviewed in conjunction with 40 CFR Part 31. OMB defines allowable costs as those costs that are ''eligible, reasonable, necessary, and allocable.'' For a cost to be eligible, the cost must not be prohibited by the statute, and it must be incurred during the budget period. Additionally, costs should be judged in context to determine that they are reasonable and necessary, and detailed budgets must include appropriate budget categories and funds must be allocated appropriately. For the purposes of implementing this program, the amount of funding used to cover these allowable costs, as identified in OMB Circular A–87 Attachment B, may be up to 15 percent of your State's allocation.

Recipients need to ensure that proper documentation is in the file to meet the procurement regulation requirement in 40 CFR part 31 and/or State procurement rules. All grant expenditures are subject to audit for the final determination of allowability of costs.

(6) Application Procedures

a. What Is the Application Process for States?

The process begins with a required *Notice of Intent to Apply* from the designated lead State Agency. Once the notices are received by EPA, the allocation formula described in Section 4 of this Notice will be used to determine a target budget for each State. EPA plans to inform States of this target budget on or before May 9, 2008 at 11:59 p.m. Eastern Time via e-mail to the contact identified in the *Notice of Intent to Apply.* Following notification of a target budget, States must prepare the application package in consultation with the EPA Regional Office. The Application Package will contain a program work plan, budget, and required administrative documents as directed in Section 6(c) of this Notice. The full application package must be submitted to the Regional Clean Diesel contact indicated in Section 11 of this Notice on or before June 23, 2008, at 11:59 p.m. Pacific Time. EPA Regional Offices and the Office of Transportation and Air Quality will evaluate applications for compliance with the requirements listed in EPAct of 2005 and this Notice.

Important Dates:

(1) April 24, 2008—Required Notice of Intent to Apply from applicants to EPA.

(2) May 9, 2008—EPA informs applicants of target budget.

(3) June 23, 2008—State application packages due to EPA Regions.

(4) August 2008—Regional Grant Offices award grants.

(5) September—October 2008—Project period begins.

(6) Quarterly—Post-award monitoring, evaluation and reporting of results of grant.

(7) Annually—Renewal of application.

b. How Do State Agencies Submit the Notice of Intent To Apply?

A template (sample letter) for the *Notice of Intent to Apply* is available on the National Clean Diesel Campaign Web site at *http://www.epa.gov/cleandiesel* under the State Program section. Components of the Notice should include (1) the intent to apply for the State Clean Diesel Grant Program, (2) signature of appropriate State official(s) with authority to commit the State (electronic signature via e-mail will be considered officially signed), (3) State's potential ability to match allocation and potential source categories of match, and (4) relevant programmatic and financial contact information (name, address, e-mail and phone). This Notice must be submitted electronically from the State's Commissioner or delegated official to EPA's Office of Transportation and Air Quality at *cleandiesel@epa.gov* on or before April 24, 2008 at 11:59 p.m. Pacific Time. The subject line of the e-mail should read ''Intent to Apply: State Clean Diesel Grant Program—[STATE NAME].''

c. What Should the Application Package Contain?

The application package must contain a work plan narrative and budget narrative in addition to the standard EPA grant application forms. The National Clean Diesel Campaign Web site, *http://www.epa.gov/cleandiesel*, will include all application materials and/or instructions necessary to complete the forms under the State Program section.

Work plans must contain sufficient detail so that EPA can determine that the proposed work meets the goal of significant reductions in diesel emissions and meets the statutory eligibility requirements and grant conditions. The work plan should include details on fleets or industry sectors the grants or loan program will target initially in year one of the program and a plan or framework to sustain the program for future years. Plans should designate resources (e.g., personnel, contracts, supplies, equipment) for the current budget period and corresponding outputs in quantifiable and measurable results. Work plans should also indicate how the State plans to meet the priority areas outlined in Section 5 of this Notice. A work plan and budget narrative template is available at *http://www.epa.gov/cleandiesel* under the State Program section.

State Agencies must submit application packages to the appropriate EPA Regional Office on or before June 23, 2008, at 11:59 p.m. Pacific Time. EPA Regional Offices will make awards after review of the application package for the applicable requirements. See Section 11 of this Notice for a list of EPA Regional contacts.

d. Are Quality Assurance and Quality Control (QA/QC) Required for Application?

Pursuant to 40 CFR 31.45, QA/QC plans and procedures may be required if a grantee's project involves environmentally related measurements or data generation.

e. Can State Clean Diesel Grant Funds Be Used With National Clean Diesel Grant Funds?

For fiscal year 2008, States can apply for both the National and State components of National Clean Diesel Programs. State agencies with jurisdiction over transportation or air quality are eligible for funding under the National Clean Diesel Program; the 50 States are eligible for funding under the State Clean Diesel Program. States will need to submit separate applications and distinct work plans for each program. Applications through the National component are awarded through a competitive process and decisions are made separately. In fiscal year 2008, decisions on the National component are likely to follow the award of the State Clean Diesel grants. See *http://www.epa.gov/cleandiesel* for links to regional competitions under the National Clean Diesel Funding Assistance Program.

(7) Selection Process

For the State Clean Diesel Program, EPA expects to award grants to all eligible States that meet the applicable requirements described in this Notice. As pursuant to Section 793(b)(2)(B) of EPAct of 2005, the process by which the Administrator or delegated authority shall approve or disapprove each application will be as follows. States must substantially comply with the application process outlined in Section 6 of this Notice including the submittal of the *Notice of Intent to Apply* and the application package. Work plans must also substantially comply with the guidelines and requirements as outlined in Section 5 of this Notice, *Use of Funds*. EPA will follow EPAct of 2005, Subtitle G Section 793 criteria and this Notice to approve or disapprove applications.

(8) Reporting Requirements

Recipients must submit progress reports and financial reports as required in 40 CFR 31.40 and 31.41 throughout the award period and a final performance report following the expiration of funding and/or prior to renewal of funding.

40 CFR part 31 requires all grantees to submit timely and comprehensive progress reports on the activities funded by the grant. These reports provide EPA with the information it needs to ensure that each grantee is meeting the schedule and commitments contained in the assistance agreement. More importantly, they provide a mechanism for evaluating the environmental progress brought about by the State's Clean Diesel Program, and for reporting to Congress on this progress pursuant to Section 794 of Subtitle G, *Diesel Emissions Reduction Program* under EPAct of 2005. Regions may request that States submit quarterly reports and a final performance report following the end of the reporting period. Reporting requirements may include actual and estimated air quality and diesel fuel conservation benefits, cost-effectiveness, and cost-benefits. Reporting schedules and submittal dates are to be specified in the individual assistance agreements, and each State will be expected to adhere to its agreed-upon schedule.

States should pay particular attention to the grant and program conditions attached to their award documents. Some are standard conditions required by regulation or policy, others are ''special conditions'' added by the program which may be specific to the particular region. Compliance with these conditions will be considered as part of the program evaluation process.

(9) Renewal Process

Each year that adequate appropriations are available for State Grant and Loan Programs under Section 793 EPAct of 2005 Subtitle G, States with current programs under this authority will need to follow EPA guidelines on renewing funds. Renewal decisions will be based, in part, on satisfactory performance the previous year on the work plan's stated activities. EPA has established a streamlined process for renewal of existing grants that will include at a minimum, evaluation of submitted quarterly

reports, whether awardees are making adequate progress in meeting their Stated goals, and a revised work plan to identify next year's activities. EPA will provide specific dates and guidelines for the renewal process through a **Federal Register** Notice as funding is appropriated by Congress. Eligible entities who did not apply in fiscal year 2008 will have an opportunity to participate in the program for following years and may be required to submit a *Notice of Intent to Apply*. Specific processes and deadlines will be available through subsequent **Federal Register** Notices.

(10) Resources and Tools

EPA has developed resources and tools for States including technical guidance on the cost-effectiveness of retrofit technologies for on-highway and non-road heavy-duty diesel engines. These resources are available at *http://www.epa.gov/cleandiesel*.

(11) EPA OTAQ and Regional Clean Diesel Contacts

a. Office of Transportation and Air Quality (Headquarters)—Washington, DC, Jennifer Keller, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Mail-Stop: 6405–J. Phone (202) 343–9541, Fax (202) 343–2803, *keller.jennifer@epa.gov*.

b. Administrator Address:

U.S. Environmental Protection Agency, Administrator Stephen L. Johnson, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

c. Regional Clean Diesel Contacts

(1) Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont: Lucy Edmondson, USEPA Region I, EPA New England, One Congress Street, Boston, MA, T: (617) 918–1004; F: (617) 918–0004; *edmondson.lucy@epa.gov*.

(2) Region II—New Jersey, New York: Melanie Zeman, USEPA Region II, 290 Broadway, 25th floor—Air Programs Branch, New York, NY 10007–1866, T: (212) 637–4022; F: (212) 637–3901; *zeman.melanie@epa.gov*.

(3) Region III—Delaware, Maryland, Pennsylvania, Virginia, West Virginia: Bill Jones, USEPA Region III, 1650 Arch Street, Philadelphia, PA 19103, T: (215) 814–2023; F: (215) 814–2101; *jones.bill@epa.gov*.

(4) Region IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: Scott Davis, USEPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, T: (404) 562–9127; F: (404) 562–9019; *davis.scottr@epa.gov*.

(5) Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: Steve Marquardt, USEPA Region V, 77 West Jackson Blvd., Mail Code A–18J, Chicago, IL 60604, T: (312) 353–3214; F: (312) 886–0617; *marquardt.steve@epa.gov*.

(6) Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas: Ruben Casso, USEPA Region VI, 1445 Ross Avenue, Dallax, TX 75202, Mail Code: 6PD–Q, T: (214) 665–6763; F: (212) 665–6762; *casso.ruben@epa.gov*.

(7) Region VII—Iowa, Kansas, Nebraska, Missouri: Alan Banwart, USEPA Region VII, 901 N. 5th Street, Kansas City, KS 66101, T: (913) 551–7819; F: (913) 551–7844; *banwart.alan@epa.gov*.

(8) Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming: Rebecca Russo, USEPA Region VIII, 1595 Wynkoop Street, Denver, CO 80202, T: (303) 312–6757; F: (303) 312–6064; *russo.rebecca@epa.gov*.

(9) Region IX—Arizona, California, Hawaii, Nevada: Michael Mann, USEPA Region IX (Air–1), 75 Hawthorne Street, San Francisco, CA 94105, T: (415) 972–3505; F: (415) 947–3581; *mann.michael@epa.gov*.

(10) Region X—Alaska, Idaho, Oregon, Washington: Wayne Elson, USEPA Region X, 1200 Sixth Avenue, Suite 900, M/S AWT–107, Seattle, WA 98101, T: (206) 553–1463; F: (206) 553–0110; *elson.wayne@epa.gov*.

Dated: February 27, 2008.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. E8–4702 Filed 3–7–08; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 13, 2008, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- February 14, 2008.

B. New Business

- Notice and Request for Comment-Proposed Revisions to the Interagency Questions and Answers Regarding Flood Insurance.

C. Reports

- Spring 2008 Abstract of the Unified Agenda and Regulatory Performance Plan.
- FCSBA Quarterly Report.

Closed Session *

- Commodity and Capital Trends.

Dated: March 5, 2008.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 08–998 Filed 3–6–08; 12:11 pm]

BILLING CODE 6705–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation Board; Regular Meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 13, 2008, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public.

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 10, 2008.

B. Business Reports

- FCSIC Financial Report.
- Report on Insured Obligations.
- Quarterly Report on Annual Performance Plan.

C. New Business

- Presentation of 2007 Audit Results.

Closed Session

- FCSIC Report on System Performance.
- Executive Session of the FCSIC Board Audit Committee with the External Auditor.

Dated: March 4, 2008.

Roland E. Smith,

Secretary, Farm Credit System Insurance, Corporation Board.

[FR Doc. E8–4695 Filed 3–7–08; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2853]

Petitions for Reconsideration of Action in Rulemaking Proceeding

March 4, 2008.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by March 25, 2008. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Creation of a Low Power Radio Service (MM Docket 99–25).

Number of Petitions Filed: 5.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–4622 Filed 3–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[[DA 08–300]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') gives notice of Mr. Thomas J. Kennedy III's suspension from the schools and libraries universal service support mechanism (or ''E-Rate Program''). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Kennedy, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

DATES: Opposition requests must be received by April 9, 2008 . However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or April 9, 2008, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov.* If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111. Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 08–300, which was mailed to Mr. Kennedy and released on February 6, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Trent B. Harkrader,

Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

The attached is the Suspension and Initiation of Debarment Letter to Thomas J. Kennedy III.

February 6, 2008.

DA 08–300

VIA Certified Mail

Return Receipt Requested and Facsimile (203–977–7301)

Mr. Thomas J. Kennedy III, c/o Stanley A. Twardy, Jr., Day Pitney LLP, One Canterbury Green, Stamford, CT 06901–2047, E-mail: *satwardy@daypitney.com*

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–08–IH–0285

Dear Mr. Kennedy: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction for mail fraud in violation of 18 U.S.C. 1341 in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

[1] Any further reference in this letter to ''your conviction'' refers to your February 13, 2007 guilty plea and subsequent conviction of mail fraud. *United States* v. *Thomas J. Kennedy III*, Criminal Docket No. 3:07–CR–186 (RNC), Plea Agreement (D. Conn. filed Aug. 24, 2007 and entered Aug. 27, 2007) (*''Kennedy Plea Agreement''*), Judgment (D. Conn. filed and entered Jan. 24, 2008) (*''Kennedy Judgment''*).

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal

Continued

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] You pled guilty to mail fraud for activities in connection with your participation in the E-Rate program involving telecommunications upgrade projects in four Connecticut school districts.[4] While employed as an account manager for a company that had a partnership arrangement with Southwestern Bell Communications (''SBC''), you participated in a scheme to defraud SBC and the E-Rate program.[5] You and three SBC employees, including Richard E. Brown and Keith J. Madeiros, decided that engineers would be hired for E-Rate funded projects and that the cost of these engineering services would be billed at inflated rates first to SBC and later to a SBC subcontractor.[6] SBC paid the invoices and then submitted those invoices to USAC seeking excessive reimbursement from the E-rate funds.[7] The invoices were inflated by more than $500,000.[8] You admitted that payments for the inflated amount were split primarily among you, Mr. Brown, and Mr. Madeiros and that you received $249,525.[9]

Pursuant to section 54.8(a)(4) of the Commission's rules,[10] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[11] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[12]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[13] Such requests, however, will not ordinarily be granted.[14] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[15] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[16]

II. Initiation of Debarment Proceedings

Your guilty plea to and conviction of criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[17] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[18] Absent extraordinary circumstances, the Bureau will debar you.[19] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[20] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[21]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[22] The Bureau may, if necessary to protect the public interest, extend the debarment period.[23]

Please direct any response, if by messenger or hand delivery, to Marlene

service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (*''Second Report and Order''*) (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (Program Management Order)* (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *See Second Report and Order,* 18 FCC Rcd at 9225, para. 66; *Program Management Order,* 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.8(a)(6).

[4] *See Kennedy Plea Agreement* at 1; *United States* v. *Thomas J. Kennedy III,* Criminal Docket No. 3:07–CR–186 (RNC), Information, paras. 7–28 (D. Conn. filed Aug. 24, 2007 and entered Aug. 27, 2007) (''*Kennedy Information*''); *http://www.usdoj.gov/usao/ct/Press2008/20080123–5.html* (last accessed Jan. 25, 2008) (''*DOJ January 23, 2008 Press Release*'').

[5] *See Kennedy Information* at paras. 13–15; *DOJ January 23, 2008 Press Release* at 1.

[6] *See Kennedy Information* at paras. 15–28; *DOJ January 23, 2008 Press Release* at 1. The Bureau has debarred Richard E. Brown from the E-Rate program. *See* Letter from Hillary S. DeNigro to Richard E. Brown, Notice of Debarment, 22 FCC Rcd 20569 (Enf. Bur., Investigations & Hearings Div., rel. Nov. 27, 2007); 72 FR 73821 (Dec. 28, 2007). The Bureau has suspended Keith J. Madeiros from the E-Rate program and initiated debarment proceedings against him. *See* Letter from Hillary S. DeNigro to Keith J. Madeiros, Notice of Suspension and Initiation of Debarment Proceedings, DA 08–129 (Enf. Bur., Investigations & Hearings Div., rel. Jan. 18, 2008).

[7] *See Kennedy Information* at paras. 21, 26; *DOJ January 23, 2008 Press Release* at 1.

[8] *See id.*

[9] *See id.*

[10] 47 CFR 54.8(a)(4). *See Second Report and Order,* 18 FCC Rcd at 9225–9227, paras. 67–74.

[11] 47 CFR 54.8(a)(1), (d).

[12] *Second Report and Order,* 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[13] 47 CFR 54.8(e)(4).

[14] *Id.*

[15] 47 CFR 54.8(e)(5).

[16] *See Second Report and Order,* 18 FCC Rcd at 9226, para 70; 47 CFR 54.8(e)(5), 54.8(f).

[17] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Such activities ''include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanisms.'' 47 CFR 54.8(a)(1).

[18] *See Second Report and Order,* 18 FCC Rcd at 9226, para 70; 47 CFR 54.8(e)(3).

[19] *Second Report and Order,* 18 FCC Rcd at 9227, para 74.

[20] *See id.,* 18 FCC Rcd at 9226, para 70; 47 CFR 54.8(e)(5).

[21] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[22] *Second Report and Order,* 18 FCC Rcd at 9225, para 67; 47 CFR 54.8(d), 54.8(g).

[23] *Id.*

H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov.*

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov.* If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov.*

Trent B. Harkrader,

Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail) Anthony E. Kaplan, Esq., Supervisory Assistant United States Attorney Calvin B. Kurimai, Esq., Assistant United States Attorney

[FR Doc. E8–4588 Filed 3–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 25, 2008.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Loreen N. Spragg, Rogersville, Missouri, individually and as successor trustee of the Revocable Trust of Robert M. Spragg; to retain voting shares of Citizens National Bancorp, Inc., and thereby indirectly retain voting shares of Citizens National Bank of Springfield, both of Springfield, Missouri.

Board of Governors of the Federal Reserve System, March 5, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–4620 Filed 3–7–08; 8:45 am]

BILLING CODE 6210–01–S

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 April 4, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. North Alabama Bancshares, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of North Alabama Bank, both of Hazel Green, Alabama.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Community Bancshares, Inc., Batesville, Arkansas; to acquire 100 percent of the voting shares of Goodman State Bank, Goodman, Missouri.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Commerce Financial Corporation, Corpus Christi, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Security State Bancshares, Inc., and thereby indirectly acquire voting shares of Security State Bank, both of Stockdale, Texas.

2. Red River Bancorp, Inc., Gainesville, Texas; to merge with Saint Jo Bancshares, Inc., and thereby indirectly acquire voting shares of First National Bank of Saint Jo, both of Saint Jo, Texas, and First Financial Company of Saint Jo, Dover, Delaware.

Board of Governors of the Federal Reserve System, March 5, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–4619 Filed 3–7–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), March 17, 2008.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the February 19, 2008 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
a. Monthly Participant Activity Report.
b. Monthly Investment Performance Report.
c. Legislative Report.

Parts Closed to the Public

3. Procurement.
4. Personnel.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: March 6, 2008.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 08–1004 Filed 3–6–08; 3:58pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at the Savannah River Site, Aiken, SC, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Savannah River Site, Aiken, South Carolina, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Savannah River Site.

Location: Aiken, South Carolina.

Job Titles and/or Job Duties: All workers.

Period of Employment: January 1, 1950 through December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: March 5, 2008.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E8–4762 Filed 3–7–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at the Savannah River Site, Aiken, SC, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Savannah River Site, Aiken, South Carolina, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Savannah River Site.

Location: Aiken, South Carolina.

Job Titles and/or Job Duties: All laborers, foremen, and construction workers.

Period of Employment: March 9, 1951 through October 24, 1986.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: March 5, 2008.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E8–4761 Filed 3–7–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Report on Carcinogens (RoC); Request for Public Comments on the RoC Expert Panel's Recommendations on Listing Status for Captafol and Ortho-nitrotoluene in the 12th RoC and the Scientific Justifications for the Recommendations

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Request for public comment.

SUMMARY: The RoC Office invites public comment on the recommendations from an expert panel on listing status for captafol and ortho-nitrotoluene in the 12th RoC and the scientific justification for the recommendations. The recommendation and scientific justification for each candidate substance are available electronically in Part B of the Expert Panel Report *http://ntp.niehs.nih.gov/go/29682,* (see Expert Panel Report Part B) or in printed text from the RoC Office (see **FOR FURTHER INFORMATION CONTACT** below). The RoC Office convened a nine-member expert panel of scientists from the public and private sectors on October 15–16, 2007. The panel was asked (1) to apply the RoC listing criteria to the relevant scientific evidence and make a recommendation regarding listing status (i.e., *known to be a human carcinogen, reasonably anticipated to be a human carcinogen,* or not to list) for captafol and for ortho-nitrotoluene in the 12th RoC and (2) to provide the scientific justification for the recommendation.

DATES: The Expert Panel Report (Part B) for captafol and for ortho-nitrotoluene will be available for public comment by March 3, 2008. Written comments should be submitted by April 24, 2008.

ADDRESSES: Comments should be sent to Dr. Ruth Lunn, RoC Office [NIEHS, P.O. Box 12233, MD EC–14, Research Triangle Park, NC 27709, FAX: (919) 541–0144, or *lunn@niehs.nih.gov.* Courier address: Report on Carcinogens, 79 T.W. Alexander Drive, Building 4401, Room 3118, Research Triangle Park, NC 27709].

FOR FURTHER INFORMATION CONTACT: Dr. Ruth Lunn, RoC Office, 919–316–4637 *lunn@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

Captafol and ortho-nitrotoluene are among the candidate substances under review for possible listing in the 12th RoC (see complete list at *http://ntp.niehs.nih.gov/go/10091*). Captafol (CAS RN: 2425–06–1) is a broad-spectrum fungicide that was widely used in the United States prior to the mid 1980s on fruits, vegetables, and other plants, as well as on timber products. In 1999, the U.S. Environmental Protection Agency (EPA) revoked all captafol tolerances except those for onions, potatoes, and tomatoes. In 2006, EPA revoked specific tolerances and tolerance exemptions for captafol, and stakeholders withdrew their support for import tolerances. Although many countries have now banned its use, captafol is still registered in some countries (such as Mexico). The potential exists for past, extensive exposure for U.S. workers producing the chemical, as well as for agricultural workers because of past production and use of millions of pounds of captafol.

Ortho-nitrotoluene (CAS RN: 88–72–2) is used to synthesize agricultural and organic chemicals, explosives, azo and sulfur dyes, and dyes for cotton, wool, silk, leather, and paper. Ortho-nitrotoluene is a high production volume chemical, and its U.S. production was between 10 million and 50 million pounds for every four-year reporting period from 1986 to 2002. Exposure to ortho-nitrotoluene in the United States is primarily a result of occupational exposure during the production and use of this chemical.

As part of the RoC review process (available at *http://ntp.niehs.nih.gov/go/15208*), the NTP announced the availability of the draft background documents for captafol and ortho-nitrotoluene in the **Federal Register** (72 FR 41755, July 31, 2007), invited public comments on the draft background documents, and announced the captafol and ortho-nitrotoluene expert panel meeting. The RoC Office convened a nine-member expert panel of scientists from the public and private sectors to evaluate these two substances. The expert panel met on October 15–16, 2007, in a public forum at the Sheraton Chapel Hill Hotel in North Carolina. The panel first addressed captafol and then ortho-nitrotoluene in its deliberations. The panel was charged to peer review the draft background document for the candidate substance and then to make a recommendation on its listing status in the 12th RoC and to provide a scientific justification for that recommendation. Details about the meeting, including public comments received and the expert panel reports, are available on the RoC Web site (*http://ntp.niehs.nih.gov/go/29682*). The expert panel report for each candidate substance contains two parts: Part A contains the peer-review comments on the draft background document and Part B is the recommendation on listing status and its scientific justification. The expert panel recommended that (1) captafol be listed in the 12th RoC *as reasonably anticipated to be a human carcinogen* and (2) ortho-nitrotoluene be listed in the 12th RoC *as reasonably anticipated to be a human carcinogen.* The panel's recommendation on listing status and its scientific justification are now being released for public comment.

Next Steps

The RoC Office is in the process of finalizing the background document for each candidate substance based upon the expert panel's peer review comments and the public comments received (72 FR 41755). Persons can register free-of-charge with the NTP listserve (*http://ntp.niehs.nih.gov/go/231*) to receive notification when the final background documents are posted on the RoC Web site (*http://ntp.niehs.nih.gov/go/10091*).

As part of the RoC review process, two government groups will also conduct reviews of captafol and ortho-nitrotoluene; these meetings are not open to the public. Upon completion of these reviews, the NTP will (1) draft a substance profile, for captafol and for ortho-nitrotoluene which contains its listing recommendation for the 12th RoC and the scientific information supporting that recommendation; (2) solicit public comment on the draft substance profiles; and (3) convene a meeting of the Board of Scientific Counselors to peer review the draft substance profiles.

Request for Comments

The RoC Office invites written public comments on the expert panel's recommendations on listing status for captafol and ortho-nitrotoluene and the scientific justifications for the recommendations. All comments received will be posted on the RoC Web site. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Lunn (see **ADDRESSES** above). The deadline for submission of written comments is April 24, 2008.

Background Information on the RoC

The RoC is a Congressionally mandated document that identifies and discusses agents, substances, mixtures, or exposure circumstances (collectively referred to as ''substances'') that may pose a hazard to human health by virtue of their carcinogenicity. The RoC follows a formal, multi-step process for review and evaluation of selected chemicals. Substances are listed in the report as either *known or reasonably anticipated human carcinogens.* The NTP prepares the RoC on behalf of the Secretary of Health and Human Services. Information about the RoC and the review process are available on its Web site (*http://ntp.niehs.nih.gov/go/roc*) or by contacting Dr. Lunn (see **FOR FURTHER INFORMATION CONTACT** above).

Dated: February 29, 2008.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E8–4782 Filed 3–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Statement of Organization, Functions, and Delegations of Authority

The Agency for Healthcare Research and Quality (AHRQ) is amending Part E, Chapter E, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (61 FR 15955, April 10, 1996, most recently amended at 68 FR 44084, July 25, 2003) to reflect recent organizational changes.

AHRQ is consolidating all existing Office of Communications and Knowledge Transfer (OCKT) (see *http://www.ahrq.gov/about/ockt/ocktmiss.htm*) subdivisions to streamline information synthesis and dissemination activities. The specific amendments are as follows, under Section E–20, Functions:

- Delete the title and statement for Division of Print and Electronic Publishing (EBB) in its entirety;

- Delete the title and statement for Division of Public Affairs (ENC) in its entirety; and,

• Delete the title and statement for Division of User Liaison and Research Translation (END) in its entirety.

These changes are effective upon the date of the Director of AHRQ's signature.

Dated: February 28, 2008.

Carolyn M. Clancy,

AHRQ Director.

[FR Doc. E8–4458 Filed 3–7–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0692]

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.

Notice of Correction to Burden Table

Proposed Project

A Survey of the Knowledge, Attitudes and Practice of Medical and Allied Health Professionals Regarding Fetal Alcohol Exposure—Revision—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Description of Correction

The previous 30-day Federal Registrar (FRN) published January 25, 2008, Volume 73, No. 17, Pages 4575–4576, was submitted with an error showing five previously approved forms. This notice is corrected to show only the requested number of burden hours to continue this project.

Background and Brief Description

Maternal prenatal alcohol use is one of the leading, preventable, causes of birth defects and developmental disabilities. Children exposed to alcohol during fetal development can suffer a wide array of disorders, from subtle changes in I.Q. and behaviors to profound mental retardation. These conditions are known as fetal alcohol spectrum disorders (FASDs). The most severe condition within the spectrum is fetal alcohol syndrome (FAS), which involves disorders of the brain, growth retardation, and facial malformations.

Physicians and other health practitioners play a vital role in diagnosing FAS and in screening women of child-bearing age for alcohol consumption and drinking during pregnancy. In Diekman's, *et al.* (2000) study of obstetricians and gynecologists, only one fifth of doctors surveyed reported abstinence to be the safest way to avoid the adverse outcomes associated with fetal alcohol exposure. Importantly, 13% of doctors surveyed were not sure of levels of alcohol consumption associated with adverse outcomes. One of CDC's multifaceted initiatives in combating alcohol-exposed pregnancies is the education and reeducation of medical and allied health students and practitioners.

In fiscal year 2002, the Centers for Disease Control and Prevention (CDC) received a congressional mandate to develop guidelines for the diagnosis of FAS and other conditions resulting from prenatal alcohol exposure; and to incorporate these guidelines into curricula for medical and allied health students and practitioners [Public Health Service Act Section 317K (247b–12) b and c].

In response to the second congressional mandate listed above, CDC proposed five national surveys of health providers. In August of 2005, OMB approved these five surveys under control number 0920–0692. The purposes of the surveys are to assess, among various health care provider groups, their knowledge, attitudes, and practices regarding the prevention, identification, and treatment of FASDs. These health care provider groups are pediatricians, obstetrician-gynecologists (OB-GYNs), psychiatrists, family physicians, and allied health professionals.

The results of the surveys will help to inform further development of model FASD curricula to disseminate among medical and allied health students and professionals nation wide using a variety of formats including computer interactive learning applications, workshops and conferences, Continuing Medical Education credit courses, and medical and allied health school grand rounds and clerkships. Consistent with OMB's previous terms of clearance, CDC does not expect the results to be generalizable to the larger populations of the professional organizations from which the samples were drawn. Instead, the survey results will provide necessary information to further develop and refine educational materials for medical and allied health students and practitioners and to evaluate their effectiveness. No gifts or compensation will be given to respondents who complete the survey. An average of one survey per year will be conducted.

There are no costs to respondents other than their time. The total estimated annualized burden hours are 375.

ESTIMATED ANNUALIZED BURDEN

Type of respondent	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Selected Survey Instrument	900	1	25/60

Dated: February 29, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–4650 Filed 3–7–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–08–08AS]

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 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting 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

Surveys of BioSense Trainings,—New—National Center for Public Health Informatics (NCPHI), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Congress passed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which requires specific activities related to bioterrorism preparedness and response. This congressional mandate outlines the need for improving the overall public's health through electronic surveillance. The Department of Health and Human Services outlined strategies aimed at achieving this goal via the Public Health IT Initiative thereby creating the BioSense program.

BioSense is the national, human health surveillance system designed to improve the nation's capabilities for disease detection, monitoring, and real-time health situational awareness. This work is enhanced by providing public health real-time access to existing data from healthcare organizations, state syndromic surveillance systems, national laboratories, and others for just in time public health decision-making. BioSense data are analyzed through advanced statistical methods, and made accessible through the BioSense application. The application provides data, charts, graphs, and maps through a secure web-based interface which can be accessed by CDC and authorized state and local public health and hospital users.

In order to meet the congressional mandate, it is important that BioSense users understand the role of BioSense in daily surveillance as well as be able to use specific BioSense modalities to investigate or monitor any potential disease outbreaks and/or bioterrorist attacks. A series of training tools have been developed to educate BioSense users about how best to utilize BioSense in these circumstances.

The training tools were developed based upon a 2007 needs assessment conducted among BioSense users. Training 1 is an online, self-paced training module designed for BioSense users at the beginner level who are not wholly familiar with BioSense or have not used the system on a regular basis. This module presents the background of BioSense and an overview of its general functions in a didactic training style. Training 2 is a virtual training filmed in Second Life. It is designed for intermediate to advanced level users who are aware of and have used the general BioSense functionalities for daily surveillance but want additional skills related to using BioSense during an emergency scenario. This scenario-based module is presented in an experiential training style.

Data collection will take place in the form of an online survey immediately following each training module and a link to an online survey emailed 3-months post training. This data collection will assess the goals of these trainings, which are to help registered BioSense users (1) establish knowledge and efficacy necessary to use BioSense to investigate and/or monitor a potential event or outbreak; (2) facilitate communication between BioSense administrators in public health and hospital settings; (3) access BioSense trainings that are engaging and easy to use; and (4) use BioSense to investigate and/or monitor a potential event or outbreak. The post-training and 3-month follow-up surveys have been pre-tested with less than 9 participants. Survey results will be used to identify the impact and applicability of these training modules for BioSense users.

There are no costs to survey respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Post-Training Survey	400	1	10/60	67
3–Month Follow Up Survey	320	1	5/60	27
Total				94

Dated: February 29, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–4651 Filed 3–7–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Clinical Laboratory Improvement Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through February 19, 2010.

For information, contact Thomas Hearn, PhD, Executive Secretary, Clinical Laboratory Improvement Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop C12, Atlanta, Georgia 30333, telephone 404/718–1048 or fax 404/639–3039.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 29, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–4719 Filed 3–7–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): ''Annual Estimates of Influenza Vaccine Effectiveness for Preventing Laboratory Confirmed Medically Attended Outcomes'', Funding Opportunity Announcement (FOA) IP08–001 and ''Influenza Vaccine Efficacy in Tropical and Developing Countries'', FOA IP08–002

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 9 a.m.–5 p.m., April 30, 2008 (Closed).

Place: Centers for Disease Control and Prevention, Atlanta, GA.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Annual Estimates of Influenza Vaccine Effectiveness for Preventing Laboratory Confirmed Medically Attended Outcomes'', Funding Opportunity Announcement (FOA) IP08–001 and ''Influenza Vaccine Efficacy in Tropical and Developing Countries'', FOA IP08–002.''

For Further Information Contact: Christine J. Morrison, Ph.D., Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639–3098.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 29, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–4754 Filed 3–7–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control/ Initial Review Group, (NCIPC/IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

Times and Dates:

1 p.m.–1:30 p.m., March 26, 2008 (Open)
1:30 p.m.–5 p.m., March 26, 2008 (Closed)

Place: Teleconference.

Status: Portions of the meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of cooperative agreement applications submitted in response to Fiscal Year 2008 Requests for Applications related to the following individual research announcement: CE08–007, Assessing the Effects of Interpersonal Violence Prevention on Suicide.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: J. Felix Rogers, Ph.D., M.P.H., Telephone (770) 488–4334, CDC, 4770 Buford Highway, NE., M/S F62, Atlanta, Georgia 30341–3724.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 29, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. E8–4643 Filed 3–7–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: OCSE–157 Child Support Enforcement Program Annual Data Report.

OMB No.: 0970–0177.

Description: The information obtained from this form will be used to: (1) Report Child Support Enforcement activities to the Congress as required by law; (2) calculate incentive measures performance and performance indicators utilized in the program; and (3) assist the Office of Child Support Enforcement in monitoring and evaluating State Child Support programs.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–157	54	1	7	378.0

Estimated Total Annual Burden Hours: 378.0.

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. 08–995 Filed 3–7–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Developmental Disabilities Protection and Advocacy Program Performance Report.

OMB No.: 0980–0160.

Description: This information collection is required by federal statute. Each State Protection and Advocacy System must prepare and submit a Program Performance Report for the preceding fiscal year of activities and accomplishments and of conditions in the State. The information in the Annual Report will be aggregated into a national profile of Protection and Advocacy Systems. It will also provide Administration on Developmental Disabilities (ADD) with an overview of program trends and achievements and will enable ADD to respond to administration and congressional requests for specific information on program activities. This information will also be used to submit a Biennial Report to Congress as well as to comply with requirements in the Government Performance and Results Act of 1993.

Respondents: Protection & Advocacy Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Developmental Disabilities Protection and Advocacy Program Performance Report	57	1	44	2,508

Estimated Total Annual Burden Hours: 2,508.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address:

infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 3, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–4403 Filed 3–7–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605–56606 as amended November 6, 1995; and as last amended at 73 FR 4877, dated January 28, 2008.)

This notice reflects organizational changes in the Health Resources and Services Administration, Bureau of Health Professions (RP). Specifically, this notice updates the mission statement of the Bureau of Health Professions (RP) and updates the functional statements of the Bureau of Health Professions.

Chapter RP, Office of the Administrator

Section RP, 00 Mission

Delete in its entirety and replace with the following:

Increase the population's access to health care by providing national leadership in the development, distribution and retention of a diverse, culturally competent health workforce that can adapt to the population's changing health care needs and provide the highest quality of care for all.

Section RP–10, Organization

Delete in its entirety and replace with the following:

The Bureau of Health Professions (BHPr) is headed by an Associate Administrator, who reports directly to the Administrator, Health Resources and Services Administration. The Bureau of Health Professions includes the following components:

(1) Office of the Associate Administrator (RP);

(2) Office of Shortage Designation (RP2);

(3) Office of Workforce Policy and Performance Management (RP3);

(4) Division of Nursing (RPB);

(5) Division of Medicine and Dentistry (RPC);

(6) Division of Student Loans and Scholarships (RPD);

(7) Division of Diversity and Interdisciplinary Education (RPF); and

(8) Division of Practitioner Data Banks (RPG).

Section RP–20, Functions

Delete the functional statement for the Bureau of Health Professions (RP) in its entirety and replace it with the following:

Bureau of Health Professions (RP)

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. Specifically: (1) Directs the national health professions education, student assistance, and development programs and activities; (2) provides policy guidance and staff direction to the Bureau; (3) maintains liaison with other Federal and non-Federal organizations and agencies with health personnel development interest and responsibilities; (4) provides guidance and direction for technical assistance activities in the international aspects of health personnel development; (5) provides guidance and assistance to the Regional Health Administrators or regional staff as appropriate; (6) directs and coordinates Bureau programs in support of Equal Employment Opportunity; (7) coordinates and provides guidance on the Freedom of Information Act and Privacy Act activities; (8) plans, directs, coordinates, and evaluates Bureau-wide administrative management activities; and (9) serves as the Bureau's focal point for correspondence control.

Office of Shortage Designation (RP2)

Provides national leadership and management of the designation of health professional shortage areas and medically-underserved populations. Specifically: (1) Maintains and enhances the Agency's critical role in the Nation's efforts to address equitable distribution of health professionals and access to health care for underserved populations; (2) encourages and fosters an ongoing, positive working relationship with other Federal, State and private sector partners regarding health professional shortage areas and medically-underserved populations; (3) approves designation requests and finalizes designation policies and procedures for both current and proposed designation criteria; (4) negotiates and approves State designation agreements (e.g., use of databases, population estimates, Statewide Rational Service Areas); and (5) oversees grants to State primary care offices.

Office of Workforce Policy and Performance Management (RP3)

Serves as the Bureau focal point for program planning, evaluation, coordination, and analysis, including analysis and operations review of Information Management systems; health professions data analysis and research; and for health professions quality assurance efforts. Maintains liaison with governmental, professional, voluntary, and other public and private organizations, institutions, and groups for the purpose of providing information exchange. Specifically the office is responsible for the following activities: (1) Stimulates, guides, and coordinates program planning, reporting, and evaluation activities of the Divisions and staff offices; (2) provides staff services to the Associate Administrator for program and strategic planning and its relation to the budgetary and regulatory processes; (3) develops issue papers and Congressional reports relating to Bureau programs; (4) coordinates the development and implementation of the Bureau's evaluation program; (5) coordinates Bureau performance measurement and reporting; (6) sponsors and conducts research, special studies, and forecasting models on important issues that affect the national, State and local health workforce including studies relevant to current and future policies of the Bureau and their impact on the supply and demand for health professionals and the health industry at large; (7) provides technical assistance to States, educational institutions, professional associations and other Federal agencies relative to health personnel analytical information and analysis; and (8) develops and coordinates the Bureau data collection and modeling in conjunction with other entities involved in data collection and

analysis, such as the Agency for Healthcare Research and Quality (AHRQ), the National Center for Health Statistics (NCHS), the Centers for Medicare and Medicaid Services (CMS), and the Administration on Aging (AOA).

Division of Nursing (RPB)

Serves as the principal focus for nursing education and practice. Specifically: (1) Provides national leadership and professional nursing expertise in the areas of policy development, budget, planning, coordination, evaluation and utilization of nursing personnel resources; (2) serves, on behalf of the Secretary, as the Chair of the National Advisory Council on Nurse Education and Practice; (3) supports and conducts programs which address the development, supply, utilization, and quality of nursing personnel; (4) promotes the involvement of States and communities in developing and administering nursing programs and assists States and communities in improving nursing services and educational programs; (5) encourages coordination of nursing-related issues within and across Departmental entities; (6) facilitates coordination of nursing-related issues with other governmental agencies and consults with them on national or international nursing workforce planning and development issues; (7) maintains liaison with external health professional groups, the academic community, consumers, and State and community groups with a common interest in the Nation's capacity to deliver nursing services; (8) advances and promotes the development of effective models of nursing practice and education; (9) stimulates initiatives in the area of international nursing information exchange and nursing workforce planning and development; and (10) provides overall direction and management to the Division for both human and financial resources.

Division of Medicine and Dentistry (RPC)

Serves as the principal focus with regard to education, practice, and research of health personnel, with special emphasis on allopathic and osteopathic physicians, podiatrists, dentists, physician assistants and clinical psychologists. Specifically: (1) Provides professional expertise in the direction and leadership required by the Bureau for planning, coordinating, evaluating, and supporting development and utilization of the Nation's health personnel for these professions; (2) supports and conducts programs with respect to the need for and the development, use, credentialing, and distribution of such personnel; (3) engages with other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between the members of the health care team, their tasks, education requirements, training modalities, credentialing and practice; (4) conducts and supports studies and evaluations of physician, dentist, physician assistant, podiatrist and clinical psychologist personnel requirements, distribution and availability, and cooperates with other components of the Bureau and Agency in such studies; (5) analyzes and interprets physician, dental, physician assistant, podiatrist and clinical psychologist programmatic data collected from a variety of sources; (6) conducts, supports, or obtains analytical studies to determine the present and future supply and requirements of physicians, dentists, physician assistants, podiatrists and clinical psychologists by specialty and geographic location, including the linkages between their training and practice characteristics; (7) conducts and supports studies to determine potential national goals for the training and distribution of physicians in graduate medical education programs and develops alternative strategies to accomplish these goals; (8) supports and conducts programs with respect to activities associated with the international migration, domestic training, and utilization of foreign medical graduates and U.S. citizens studying abroad; (9) maintains liaison with relevant health professional groups and others, including consumers, having common interest in the Nation's capacity to deliver health services; (10) provides consultation and technical assistance to public and private organizations, agencies, and institutions, including Regional Offices, other agencies of the Federal Government, and international agencies and foreign governments on all aspects of the Division's functions; (11) provides administrative and staff support for the Advisory Committee on Training and Primary Care Medicine and Dentistry and for the Council on Graduate Medical Education; (12) represents the Bureau, Agency and Federal Government, as designated, on national committees and/or the Accreditation Council for Graduate Medical Education (ACGME) and the Accreditation Council for Continuing Medical Education (ACCME); (13) administers support programs for the development, improvement, and the operation of general, pediatric, and public health dental educational programs; (14) designs, administers and supports activities relating to dentists; (15) provides technical assistance and consultation to grantee institutions and other governmental and private organizations on the operation of these educational programs; (16) promotes the dissemination and application of findings arising from programs supported; (17) develops congressional and other mandated or special program-specific reports and publications on dental educational processes, programs and approaches; and (18) promotes, plans, and develops collaborative educational activities in clinical psychology.

Division of Student Loans and Scholarships (RPD)

Serves as the focal point for overseeing loan and scholarship programs supporting health professionals. Specifically: (1) Directs and administers the Health Professions and Nursing Student Loan and Scholarship Programs, the Federal Assistance to Disadvantaged Health Professions Scholarship Program, the Health Educational Assistance Loan Program, the Primary Care Loan Program, and the Nurse Faculty Loan Program; (2) monitors and assesses educational and financial institutions with respect to capabilities and management of Federal support for students and of tracking of obligatory service requirements; (3) develops and conducts training activities for staff of educational and financial institutions; (4) maintains liaison with and provides assistance to program-related public and private professional organizations and institutions; (5) maintains liaison with the Office of the General Counsel, and the Office of the Inspector General, DHHS, components of the Department of Education and the Department of Defense, and State agencies concerning student assistance; (6) coordinates financial aspects of programs with educational institutions; and (7) develops program data needs, formats, and reporting requirements, including collection, collation, analysis and dissemination of data.

Division of Diversity and Interdisciplinary Education (RPF)

Serves as the principal focal point for interdisciplinary health professions issues and programs, including geriatric training, and for activities to increase the diversity of the health professional workforce. Specifically: (1) Provides leadership and direction for the

development and implementation of Bureau objectives as they relate to diverse and disadvantaged populations; (2) develops and recommends health resources and health career opportunities for diverse and disadvantaged populations; (3) initiates, stimulates, supports, coordinates, and evaluates Bureau programs for improving the availability and accessibility of health careers for diverse and disadvantaged populations; (4) conducts special studies and collects baseline data to identify specific factors contributing to the health and health-related problems of diverse and disadvantaged populations, and to develop strategies for improving health services and career opportunities for diverse and disadvantaged populations; (5) conducts extramural programs, including the use of grants and contracts, specifically designed to promote equity in access to health careers; (6) promotes, designs, supports and administers activities relating to the planning and development of nationally integrated health professions education programs; (7) promotes, plans and develops collaborative, interdisciplinary activities in the specialty areas of behavioral/mental health, rural health, geriatrics and the associated health professions, and other new and developing health disciplines; (8) promotes quality improvement in health professions education through collaboration and partnerships with national and international institutes and centers for quality improvement; (9) promotes and supports academic-community partnerships whose goal is the development of interdisciplinary, community-based programs designed to improve access to health care through improving the quality of health professions education and training; (10) serves as the Federal focus for the development and improvement of education for professional public health, preventive medicine, environmental health, and health administration practice, including undergraduate, graduate, and continuing professional development; and (11) provides administrative and staff support for the Advisory Committee on Interdisciplinary, Community-Based Linkages.

Division of Practitioner Data Banks (RPG)

Coordinates with the Department and other Federal entities, State licensing boards, and national, State and local professional organizations to promote quality assurance efforts and deter fraud and abuse by administering the National Practitioner Data Bank (NPDB) as authorized under Title IV of the Health Care Quality Improvement Act of 1986 and Section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987, and administering the Healthcare Integrity and Protection Data Bank (HIPDB) for the Office of Inspector General. Specifically: (1) Maintains active consultative relations with professional organizations, societies, and Federal agencies involved in the NPDB and HIPDB; (2) develops, proposes and monitors efforts for (a) credentials assessment, granting of privileges, and monitoring and evaluating programs for physicians, dentists, and other health care professionals including quality assurance, (b) professional review of specified medical events in the health care system including quality assurance, and (c) risk management and utilization reviews; (3) encourages and supports evaluation and demonstration projects and research concerning quality assurance, medical liability and malpractice; (4) conducts and supports research based on NPDB and HIPDB information; (5) works with the Secretary's office to provide technical assistance to States undertaking malpractice reform; and (6) maintains liaison with the Office of the General Counsel and the Office of Inspector General, HHS concerning practitioner licensing and data bank issues.

Section RC–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon the date of signature.

Dated: February 19, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8–4601 Filed 3–7–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 25, 2008, 9 a.m. to March 26, 2008, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on February 27, 2008, 73 FR 10455–20456.

The meeting will be held March 31, 2008 to April 1, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: February 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–4402 Filed 3–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Collateral Circulation and PAD.

Date: March 27, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dermatology/Rheumatology Small Business Special Emphasis Panel.

Date: March 31–April 3, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Daniel F. McDonald, PhD, Scientific Review Officer, Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive,

Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Opportunistic Infections in AIDS.

Date: April 1, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–4405 Filed 3–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 19, 2008, 3 p.m. to March 19, 2008, 6 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 7, 2008, 73 FR 7312–7314.

The meeting will be held March 24, 2008, from 2 p.m. to 4:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: February 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–4409 Filed 3–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of 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 Library of Medicine Special Emphasis Panel Scholarly Works (G13).

Date: May 9, 2008.

Time: 12 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, MSC 7968, Bethesda, MD 20892–7968, (301) 594–4937, *huangz@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: May 15, 2008.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, MSC 7968, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–4404 Filed 3–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Public Meeting: Seeking Comments on Implementation of the NIH Public Access Policy

AGENCY: The National Institutes of Health (NIH) of the U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: With this notice, the National Institutes of Health (NIH) of the U.S. Department of Health and Human Services (HHS) announces the following public meeting and seeks public comment regarding implementation of the NIH Revised Policy on Enhancing Public Access to Archived Publications Resulting From NIH-Funded Research. The policy and supporting materials can be found at *http://publicaccess.nih.gov*. Comments may be submitted in advance of the meeting to NIH Public Access staff at *http://publicaccess.nih.gov/comments/comments.htm*. All comments for consideration at the meeting must be received on or before March 17, 2008. In addition, NIH advises that it will publish in the **Federal Register** in March 2008 a notice of availability of a Request for Information (RFI) asking for comments about its Public Access Policy (Policy) and the effectiveness of the Policy's implementation.

Public Meeting Time and Date: 10 a.m.–4:30 p.m., Thursday, March 20, 2008.

Location: Main Auditorium, NIH Natcher Conference Center, 9000 Rockville Pike, Building 45, Bethesda, Maryland 20892.

Background: The National Institutes of Health (NIH)—The Nation's Medical Research Agency—is comprised of 27 Institutes and Centers and is a component of the U.S. Department of Health and Human Services. It is the primary Federal agency for conducting and supporting basic, clinical, and translational medical research, and investigates the causes, treatments, and cures for both common and rare diseases. For more information about NIH and its programs, visit *http://www.nih.gov*.

The NIH Public Access Policy implements Division G, Title II, Section 218 of Public Law 110–161 (Consolidated Appropriations Act, 2008) which states:

SEC. 218. The Director of the National Institutes of Health shall require that all investigators funded by the NIH submit or have submitted for them to the National

Library of Medicine's PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication, to be made publicly available no later than 12 months after the official date of publication: Provided, That the NIH shall implement the public access policy in a manner consistent with copyright law.

As described in NIH Guide for Grants and Contracts (NOT–OD–08–033 available at *http://grants.nih.gov/grants/guide/notice-files/NOT–OD–08–033.html*), as of April 7, 2008, applicable articles arising from NIH funds must be submitted to PubMed Central upon acceptance for publication. As of May 25, 2008, NIH applications, proposals, and progress reports must include the PMC reference number when citing an article that falls under the policy. This policy includes applications submitted to the NIH for the May 25, 2008 due date and subsequent due dates.

Request for Comments: The purpose of the Thursday, March 20, 2008 meeting is to seek comment from the public on implementation of the NIH Public Access Policy. The meeting is open to everyone, including NIH-funded researchers, representatives of universities and other NIH grantee organizations, publishers (including commercial organizations, professional societies and journal editors), patients and public health advocates, and members of the public.

- NIH desires broad participation and comment. NIH is particularly interested in obtaining information on its Public Access Policy and the effectiveness of the Policy's implementation.

This meeting is open to the public. For space planning purposes, all participants are requested to register for the meeting at *http://publicaccess.nih.gov/comments/registration.htm*. The public may also view the meeting via live videocast. Videocast details will be posted to *http://publicaccess.nih.gov* by March 17, 2008.

Individuals, groups, and organizations interested in submitting written comments on the NIH policy for consideration at the meeting should direct their comments to the following NIH Web site: *http://publicaccess.nih.gov/comments/comments.htm*. Such written comments should be submitted prior to March 17, 2008. All submitted comments are considered public and will be made available through the NIH Public Access site. In addition, as set forth below, NIH will provide another opportunity for submission of comments, by issuing a Request for Information on the Public Access Policy.

Agenda and selection of speakers: An agenda for the meeting will be posted to *http://publicaccess.nih.gov/comments.htm* by March 17, 2008. Individuals wishing to present comments at the meeting can sign up to do so during the registration period at the start of the meeting. An estimated total of 30–40 comments will be presented.

Report and Subsequent Request for Information and Public Comment: In addition to this March 20th stakeholders meeting, in March 2008 NIH will publish in the **Federal Register** a notice of availability of a Request for Information (RFI) asking for comments about its Public Access Policy (Policy) and the effectiveness of the Policy's implementation. The RFI will solicit public comments for 60 days. The NIH plans to respond to the comments and announce any amendments to its Policy within 120 days of the end of the comment period.

Contact Person for Information: Questions concerning the meeting may be addressed to: Neil M. Thakur, PhD, Special Assistant to the NIH Deputy Director for Extramural Research, Building 1, Room 134, Bethesda, MD 20892, Telephone 301–496–1096, Fax 301–402–3469, *PublicAccessComments@NIH.gov*.

Dated: March 5, 2008.

Norka Ruiz Bravo,

Deputy Director for Extramural Research, NIH Office of Extramural Research, National Institutes of Health.

[FR Doc. E8–4676 Filed 3–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate, Office of Infrastructure Protection; Submission for Review Critical Infrastructure/Key Resources Private Sector Clearance Program (CIKR PSCP) 1670–NEW

AGENCY: National Protection and Programs Directorate, Office of Infrastructure Protection, Partnership and Outreach Division, Partnership Programs and Information Sharing Office.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on new information collection request 1670–NEW, Critical Infrastructure/Key Resources Private Sector Clearance Program (CIKR PSCP) Clearance Request. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), DHS is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until May 9, 2008. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESS: Comments and questions about this Information Collection Request should be forwarded to the Department of Homeland Security, National Protection and Programs Directorate, Partnership and Outreach Division, Critical Infrastructure/Key Resources Clearance Program (CIKR PSCP), Attn: Michael Schooler, Ballston 1, 3rd Floor, Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Department of Homeland Security, National Protection and Programs Directorate, Partnership and Outreach Division, Critical Infrastructure/Key Resources Private Sector Clearance Program (CIKR PSCP), Attn: Michael Schooler, *michael.schooler@dhs.gov* or 703–235–3660. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Partnership and Outreach Division.

Title: CIKR PSCP Clearance Request Form.

OMB Number: 1670–NEW.

Frequency: Once.

Affected Public: Private Sector.

Number of Respondents: 250 responses per year.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 42 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Description: The Critical Infrastructure/Key Resources Private Sector Clearance Program (CIKR PSCP) is designed to provide private sector individuals clearances so that they can be partners with DHS. These partners are subject matter experts within specific industries and sectors. DHS has created this program to facilitate granting clearances to appropriate individuals. The CIKR PSCP requires individuals to complete a clearance request form that initiates the clearance process. Individuals are selected and then invited to become partners with DHS for a specific project or task. DHS Sector Specialists or Protective Security Advisors email the form to the individual who emails back the completed form. The data from these forms make up the Master Roster. The Name, Social Security Number, Date of Birth and Place of Birth are entered into e-QIP—Office of Personnel Management's secure portal for investigation processing. Once the data is entered in e-QIP by the DHS Office of Security, Personnel Security Division then the applicant can complete the rest of the e-QIP security questionnaire. The CIKR PSCP Master Roster contains all the information found on the clearance request form in addition to their clearance info (date granted, level, date non-disclosure agreements signed.) The Administrator of the Master Roster maintains the information so as to track clearance processing and investigation information (date of investigation) and to have the most current contact information for the participants from each sector.

Dated: February 29, 2008.

Charlie Church,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E8–4605 Filed 3–7–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0029]

The National Infrastructure Advisory Council

AGENCY: Directorate for National Protection and Programs, Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Council Meeting

SUMMARY: The National Infrastructure Advisory Council will meet on April 8, 2008 in Washington, DC. The meeting will be open to the public.

DATES: The National Infrastructure Advisory Council will meet Tuesday, April 8, 2008 from 1:30 p.m. to 4:30 p.m. Please note that the meeting may close early if the committee has completed its business. For additional information, please consult the NIAC Web site, *http://www.dhs.gov/niac,* or contact Tim McCabe by phone at 703–235–2888 or by e-mail at *timothy.mccabe@associates.dhs.gov.*

Location: The meeting will be held in Washington, DC. The specific location has not yet been determined. The meeting location will be published in the **Federal Register** and posted on the NIAC Web site no later than one week prior to the meeting.

ADDRESSES: While we will be unable to accommodate oral comments from the public, written comments may be sent to Nancy Wong, Department of Homeland Security, Directorate for National Protection and Programs, Washington, DC 20528. Written comments should reach the contact person listed below by March 25, 2008. Comments must be identified by DHS–2008–0029 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: timothy.mccabe@associates.dhs.gov* Include the docket number in the subject line of the message.
- *Fax:* 703–235–3055.
- *Mail:* Nancy Wong, Department of Homeland Security, Directorate for National Protection and Programs, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Infrastructure Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Wong, NIAC Designated Federal Officer, Department of Homeland Security, Washington, DC 20528; telephone 703–235–2888.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Infrastructure Advisory Council shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

The National Infrastructure Advisory Council will meet to address issues relevant to the protection of critical infrastructure as directed by the President. The April 8, 2008 meeting will also include final deliberations from one Working Group:

(1) The Insider Threat to Critical Infrastructures.

The Council will also hear status reports from its two new Working Groups:

(1) The Combined Topic Working Group; and

(2) The Critical Partnership Strategic Assessment Working Group.

Procedural

While this meeting is open to the public, participation in The National Infrastructure Advisory Council deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the NIAC Secretariat at 703–235–2888 as soon as possible.

Dated: March 4, 2008.

Nancy Wong.

Designated Federal Officer for the NIAC.

[FR Doc. E8–4713 Filed 3–7–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–0003]

Permanent Relocation of the Coast Guard National Maritime Center (NMC)

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard National Maritime Center (NMC), which was previously located in Arlington, VA, and more in Kearneysville, WV, has moved into its new permanent location in Martinsburg, WV, as part of a planned effort to restructure and centralize the Mariner Licensing and Documentation (MLD) Program. This notice provides information regarding both the MLD Program restructuring and how to address correspondence to the appropriate staff of the reorganized and relocated NMC.

DATES: The permanent office in Martinsburg, WV, became operational on January 7, 2008. No further NMC operations will be carried out in Arlington, VA, or Kearneysville, WV.

ADDRESSES: The National Maritime Center's new facility is located at 100 Forbes Drive in Martinsburg, WV.

Correspondence should be addressed as follows in order to facilitate the most efficient mail processing and timely responses to the public's requests:

Commanding Officer

* (For correspondence to other than the Commanding Officer, insert the appropriate division title and designation as provided below.)

Coast Guard National Maritime Center 100 Forbes Drive, Martinsburg, WV 25404.

* *Operations and Oversight (NMC–1)* for issues related to Regional Examination Center (REC) operations and quality assurance;
* *Mariner Training, Assessment, and Exams (NMC–2)* for issues related to Exams, Course Approvals, Instructors, Designated Examiners, and Oversight & Audits;
* *Program Support (NMC–3)* for issues related to finance, general administration, and information technology;
* *Mariner Information (NMC–4)* for issues related to credential application quality assurance, Freedom of Information Act (FOIA), WWII veterans, DD–214's, certificates of discharge, log books, shipping articles, and credential production;
* *Mariner Evaluation (NMC–5)* for issues related to professional, medical, and security evaluations.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Jeffrey Brandt, National Maritime Center, telephone 304–433–3667.

SUPPLEMENTARY INFORMATION: The MLD Program restructuring and centralization plan, approved in 2005, will centralize many of the functions currently performed by 17 RECs at one Merchant Mariner Credential (MMC) processing center in Martinsburg, WV, over the next 12–18 months. Having one MMC processing center will allow for more consistent procedures, cost reduction, and improved oversight and customer service to mariners. The NMC has been reorganized into five divisions consisting of the Operations and Oversight Division (NMC–1), Mariner Training and Assessment Division (NMC–2), Program Support Division (NMC–3), Mariner Information Division (NMC–4), and Mariner Evaluation Division (NMC–5).

Dated: March 4, 2008.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards, United States Coast Guard.

[FR Doc. E8–4679 Filed 3–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–0077]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: For eight fiscal years starting in 1999, the Transportation Equity Act for the 21st Century has made $5 million available to the Secretary of Transportation or the Secretary of Homeland Security for payment of Coast Guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. In 2005, the law was amended and the amount was increased to $5.5 million. This notice satisfies a requirement of the Act that a detailed accounting of the projects, programs, and activities funded under the national recreational boating safety program provision of the Act be published annually in the **Federal Register**. In this notice we have specified the amount of monies the Coast Guard has committed, obligated or expended during fiscal year 2007, as of September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Jeff Ludwig, Regulations Development Manager, telephone 202–372–1062, fax 202–372–1932.

Background and Purpose: The Transportation Equity Act for the 21st Century became law on June 9, 1998 (Pub. L. 105–178; 112 Stat. 107). The Act required that of the $5 million made available to carry out the national recreational boating safety program each year, $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels. On September 29, 2005, the Sportfishing and Recreational Boating Safety Amendments Act of 2005 was enacted (Pub. L. 109–74; 119 Stat. 2031). This Act increased the funds available to the national recreational boating safety program from $5 million to $5.5 million annually, and stated that ''not less than'' $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels.

The responsibility to administer these funds was delegated to the Commandant of the United States Coast Guard. Subsection (c) of section 7405 of the Act directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year from 1999 through 2007 shall remain available until expended.

Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The total amount of funding transferred to the Coast Guard from the Sport Fish Restoration and Boating Trust Fund and committed, obligated, and/or expended during fiscal year 2007 for each activity is shown below.

Factory Visit Program: Funding was provided to continue the national recreational boat factory visit program, initiated in January 2001. The factory visit program currently allows contractor personnel, acting on behalf of the Coast Guard, to visit 2,000 recreational boat manufacturers each year to inspect for compliance with federal regulations, communicate with the manufacturers as to why they need to comply with federal regulations, and educate them, as necessary, on how to comply with federal regulations. ($2,156,810)

Boat Compliance Testing: Funding was provided to continue expanded Boat Testing program which includes inboard/sterndrive boats and used boats. ($100,000)

Associated Equipment Compliance Testing: Funding was provided to

continue to buy recreational boat ''associated equipment'' (e.g., starters, alternators, fuel pumps, and bilge pumps) and test this equipment for compliance with federal safety regulations. This new initiative complements the boat compliance testing program. ($150,000)

New Recreational Boating Safety Associated Travel: Travel by employees of the Office of Boating Safety was performed to carry out additional recreational boating safety actions and to gather background and planning information for new recreational boating safety initiatives. ($13,489)

Boating Accident News Clipping Service: Funding was provided to continue to gather daily news stories of recreational boating accidents nationally for more real time accident information and to identify accidents that may involve regulatory non-compliances or safety defects. ($54,900)

Accident Investigation Tiger Team: Funding was provided to continue to provide on-call expert accident investigative services for any boating accident that appeared to involve a regulatory non-compliance or safety defect. ($59,278)

Web-based Document Management System: Funding was provided to continue to provide a web-based document management to better enable the handling of thousands of recreational boating recall case and campaign reports. ($49,630)

Recreational Boating Safety (RBS) Outreach Program: Funding was provided for this program which provides full marketing, media, public information, and program strategy support to the nation-wide RBS effort. The goal is to coordinate the RBS outreach initiatives and campaigns some of which include: National Boating Under the Influence Campaign (BUI), ''You're in Command. Boat Responsibly!'', PFD Wear, Vessel Safety Check Program (VSC), Boating Safety Education Courses, Propeller Strike Avoidance, Carbon Monoxide Poisoning, and other recreational boating safety issues on an as needed basis. The USCG purchased and will distribute 10,000 inflatable lifejackets to volunteer groups to be worn while conducting vessel safety checks and during public recreational boating events such as exhibits, boat shows, public education courses, etc. to promote the ''Wear it'' campaign and to make boaters aware of the modern advances in lifejackets. ($1,696,725)

Boating Accident Report Database (BARD) Web System: BARD Web System funding enables reporting authorities in the 50 States, five U.S. Territories and the District of Columbia to manage their accident reports electronically over a secure Internet environment. The system also enables the user community to generate statistical reports that show the frequency, nature, and severity of boating accidents. FY 06 funds supported system maintenance, technical (hotline) support and formal classroom instruction for the entire user community. ($310,608)

Personnel Support: Funding was provided for personnel to support the development of new regulations, to support new contracting activities associated with the additional funding, and to monitor and manage the contracts awarded. ($854,706)

National Recreational Boating Survey: A national recreational boating survey was conducted to obtain up-to-date statistical estimates on recreational boating. Over 25,000 surveys were completed with individuals who boated between September 2001 and September 2002. Survey findings were extrapolated to produce national, regional and State estimates of boat use as well as the characteristics of boat operators, passengers, boats, safety equipment, and the boating environment. ($2,126)

Risk Management for Recreational Boaters: Funding was provided for risk-based decision training focusing on three boating groups—families, friends and solo boaters. The course provides attendees with an in-depth look at proper risk management and discusses techniques for better decision-making processes in boating. The end result is to provide a potential national model to recreational boaters with decision-making skills that will result in safer boaters. The benefit will be a better understanding as to how to deal effectively with risk and lower mishap rates. ($25,000)

Propeller Guard Test Protocol: Funding was provided to complete the recreational boat handling/performance phase of a three-phase effort to develop a protocol for the testing of propeller guards. The test protocol will be made available to propeller guard manufacturers to determine the feasibility of their product for use on recreational boats. ($230,000)

Recreational Boat Rental Education Package: Funding was provided to develop a standardized educational package for recreational boat rental agencies to use to provide the necessary safety information to renters prior to renting a boat. ($73,783)

Articulated Mannequins/Computer Simulation Model: Funding was provided to continue the development of flotation mannequins and a water forces computer simulation program to promote the rapid, objective evaluation of different PFD designs on various body types that are representative of the recreational boating population. The computer simulation program will be validated through the use of a family of anthropomorphic, articulated mannequins. The development of the computer simulation program will facilitate evaluation of the effectiveness of new and unique PFD designs. ($83,109)

Of the $5.5 million made available to the Coast Guard in fiscal year 2007, $3,844,545 has been committed, obligated or expended and an additional $2,015,619 of prior fiscal year funds have been committed, obligated or expended, as of September 30, 2007. Approximately $7.8 million has not been committed, obligated or expended from previous years, and is being reserved for a multi-year national boating survey.

Dated: December 3, 2007.

James A. Watson,

Rear Admiral (Lower Half), U.S. Coast Guard, Director of Prevention Policy.

Editorial Note: This document was received at the Office of the Federal Register on March 6, 2008.

[FR Doc. E8–4755 Filed 3–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Compendium of Flood Map Changes

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: The Federal Emergency Management Agency (FEMA) announces the availability of the Compendium of Flood Map Changes which provides a listing of changes made to the National Flood Insurance Program (NFIP) maps that went into effect between July 1, 2007 through December 31, 2007. Future notices of NFIP map changes will be made available approximately every 6 months.

DATES: The listings include changes to NFIP maps that went into effect between July 1, 2007 through December 31, 2007.

ADDRESSES: The Compendium of Flood Map Changes is available on the Internet at: *http://www.fema.gov/plan/prevent/fhm/dl_comp.shtm.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch,

Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: In accordance with section 1360(i) of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4101(i), this notice is provided to inform interested parties of the availability of changes made by FEMA to NFIP maps. In the Compendium of Flood Map Changes, the two listings show communities affected by map changes made by letter and communities affected by physical map changes. For each Letter of Map Change, the first listing provides the map panel(s) affected, effective (determination) date of the change, case number, and determination type. For each physical map change, the Map Revision listing provides the map panel(s) affected and the effective date of the change. The listing also identifies: (1) Those panels on which the Special Flood Hazard Areas have not been changed or have been changed only to incorporate the Letters of Map Change issued before the effective date; and (2) those panels for which a Flood Insurance Rate Map is produced for the first time, resulting only in changes to flood insurance and floodplain management requirements in the affected community. Future notices of changes to NFIP maps will be made available approximately every 6 months.

The Compendium of Flood Map Changes is available on the Internet at *http://www.fema.gov/plan/prevent/fhm/dl_comp.shtm*. The compendia shall be available, free of charge, to Federal entities for lending regulation, Federal agency lenders, and States and communities participating in the national flood insurance program and at a cost to all other parties. For more information contact the FEMA Map Service Center at (800) 358–9616 or go to *http://www.msc.fema.gov*.

Authority: 42 U.S.C. 4101(i).

Dated: February 28, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–4631 Filed 3–7–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–192, Application for Advance Permission to Enter as Nonimmigrant (Pursuant to 212(d)(3) of the Immigration and Nationality Act); OMB Control No. 1615–0017.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 9, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to (202) 272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control No.1615–0017 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, 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 information collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant (Pursuant to 212(d)(3) of the Immigration and Nationality Act).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–192. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information furnished on Form I–192 will be used to determine if the applicant is eligible to enter the U.S. temporarily under the provisions of section 212(d)(3) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,420 responses at 30 minutes (0.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,210 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: March 3, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–4694 Filed 3–7–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5194–07]

Notice of Proposed Information Collection for Public Comment; Admission to, and Occupancy of Public Housing: Admission and Tenant Selection Policies, Verification, Notification, Preference, Waiting List, Exemption of Police Officers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 9, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Lillian L. Deitzer, Department Reports Management Officer, ODAM, Department of Housing and Urban Development, 7th Street, SW., Room 4116, Washington, DC 20410–5000; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@hud.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Mary Schulhof, Office of Policy, Programs and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: 202–708–0713 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is submitting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility and clarity of information to be collected; and, (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g. permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Admission to, and Occupancy of Public Housing: Admission and Tenant Selection Policies, Verification, Notification, Preference, Waiting List, and Exemption of Police Officers.

OMB Control Number: 2577–0220.

Description of the need for the information and proposed use: The Statute requires HUD to ensure the low-income character of public housing projects and to assure that sound management practices will be followed in the operation of the project. Public Housing Agencies (PHAs) enter into an Annual Contribution Contract (ACC) with HUD to assist low-income tenants. HUD regulations, Part 960, provide policies and procedures for PHAs to administer the low-income housing program for admission and occupancy. PHAs must develop and keep on file the admission and occupancy policies and the PHA must include in the annual plan or supporting documents the number and location of the units to be occupied by police officers, and the terms and conditions of their tenancies; and a statement that such occupancy is needed to increase security for public housing residents. PHA compliance will support the statute; and, HUD can ensure that the low-income character of the project and sound management practices will be followed.

Agency form number, if applicable: Not applicable.

Members of affected public: Individual or households, State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including respondents:

Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
3278		3278		60		196,680

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 4, 2008.

Bessy Kong,

Deputy Assistant Secretary for Policy, Programs and Legislative Initiatives.

[FR Doc. E8–4727 Filed 3–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5207–N–01]

Notice of Fiscal Year (FY) 2008 Opportunity To Register Early and Other Important Information for Electronic Application Submission Via Grants.gov

AGENCY: Office of Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: This notice provides instructions to potential applicants applying for funding under HUD's grant programs available through Grants.gov. This notice does not pertain to applicants who will be applying in Fiscal Year (FY) 2008 for Continuum of Care funds. HUD will publish a separate notice to address the receipt of Continuum of Care applications in FY2008. This notice provides information to help applicants better understand the registration and electronic submission process for HUD applications made available through Grants.gov. Grants.gov is the federal portal for applicants to electronically find and apply for over 1,000 funding opportunities made available by 26 Federal grant-making agencies. Grants.gov offers the applicant community a common Web site where applicants can apply for a variety of federal assistance programs. To date, all 26 Federal grant-making agencies have posted their funding opportunities and

electronic application packages to Grants.gov.

HUD believes that by facilitating a better understanding of the electronic submission process, applicants will be able to more easily make the transition to electronic application submission. HUD advises potential applicants to carefully read this notice and immediately begin the registration process or renew their registration from prior years.

To apply on-line electronically, Grants.gov requires an electronically authorized signature, known as e-Authentication. This requirement for an authenticated electronic signature serves to protect the applicant and the applicant's information, and to assure federal agencies that they are interacting with officials authorized to submit applications on behalf of applicant entities.

Through this notice, HUD is encouraging applicants to complete or update their registration, in advance of HUD posting its FY2008 grant opportunities. HUD found that issuing an Early Registration Notice eliminates many last minute registration issues, and allows applicants time to ensure that all steps in the registration process have been completed. This Notice also provides time for applicants to have their questions addressed regarding the registration and submission processes. HUD strongly encourages prospective applicants for FY2008 HUD grants to register or update/renew their registration for application submission via Grants.gov as soon as possible by following the instructions in this notice. HUD anticipates that it will post its funding opportunities in the Spring of 2008.

FOR FURTHER INFORMATION CONTACT: The Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3156, Washington, DC 20410–5000; telephone number (202) 708–0667. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Full Text of Announcement

This notice is divided into two sections. Section I describes the registration process including steps to renew/update an existing registration. Section II provides guidance to applicants trying to submit an application and that are experiencing upload or transmission issues. HUD continues to require applicants submit their applications electronically via Grants.gov.

In FY 2007, over 99.5 percent of applicants successfully submitted applications electronically for HUD's grant programs via grants.gov. Less than one-half of one percent of applicants experienced registration or submission issues. While these numbers are relatively small, HUD strives to assist all applicants gain a better understanding of the electronic submission process. This notice serves to strongly encourage applicants to submit their applications in advance of the deadline date and when the Grants.gov help desk is open so if any issue arises, there is sufficient time to provide timely assistance.

In FY 2008 HUD will be using Adobe forms in the application packages. The Adobe forms are compatible with the Vista operating system, Microsoft Office 2007 and Apple Macintosh computers. To use the Adobe forms, applicants must download the free Adobe Reader 8.1.2 or the latest Adobe Reader version available from Grants.gov. For information on compatibility or to download the Adobe Reader, go to the Grants.gov Web site at *http://www.grants.gov/help/download_software.jsp*.

Section II of this notice provides information regarding how to download the application package and the application instructions package from Grants.gov. Applicants do not need to be registered with Grants.gov to download an application or the instructions, but all the steps in the registration process must be complete to successfully submit an application for funding consideration via Grants.gov. Applicants should carefully read the instructions before completing the application. The instructions download will contain the General Section and the Program Section. Together, these documents provide details of what will be required in your application submission as well at what rules and requirements you will be expected to comply with if you get awarded funds. The General Section explains the switch to Adobe forms and changes that were made to the 2008 General Section and Program Sections. The instructions download also contain any additional forms that are not part of the application package but are required to have a complete application.

I. Completing the Registration Process for New Applicants or Updating a Registration for Applicants That Are Currently Registered

A. The Need To Register With Grants.gov.

HUD provides funding only to organizations. This information, therefore, is directed to HUD applicants that are organizational entities.

Before an applicant can apply for a grant opportunity, the applicant must first register with Grants.gov to provide and obtain certain identifying information. Please note that registration is a multi-step process. The registration process also requires the applicant to provide information at Web sites other than Grants.gov. Registration protects both HUD and the applicant. Specifically, registration confirms that the applicant has designated a certain individual or entity to submit an application on its behalf and assures the HUD that it is interacting with a designated representative of the applicant who has been authorized to submit the application.

B. Steps To Register

HUD's NOFA process requires applicants to submit applications electronically through Grants.gov. Before being able to do so, applicants must complete several important steps to register or update/renew their registration as submitters. The registration process can take approximately 2 to 4 weeks to complete.

1. *Step One:* Obtain a Dun and Bradstreet Data Universal Numbering System (DUNS). Step One of the registration process requires an applicant to obtain a DUNS number for the organizational entity for which it will be submitting the application. All organizations seeking funding directly from HUD must have a DUNS number and include the number on the form SF–424, Application for Federal Financial Assistance, which is part of the application package. The DUNS number is also a required as part of the registration process. If your organizational entity already has a DUNS number, it may use that number provided it is registered with Dun and Bradstreet (D&B) as required by this notice. Failure to provide a DUNS number will prevent you from obtaining an award, regardless of whether it is a new award or renewal of an existing one. This policy is pursuant to OMB policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402). HUD codified the DUNS number requirement on November 9, 2004 (69 FR 65024). A copy of the OMB **Federal Register**

notice and HUD's regulation codifying the DUNS number requirement can be found at *www.hud.gov/offices/adm/grants/duns.cfm*. Applicants cannot submit an application without a DUNS number.

Applicants must note that applicant information entered and used to obtain the DUNS number will be used to pre-populate the Central Contractor Registration (CCR), which is Step Two of the registration process. Applicants should, therefore, carefully review information entered when obtaining a DUNS number. When registering with D&B, please be sure to use the organizational entity's legal name used when filing a return or making a payment to the Internal Revenue Service (IRS). Organizations should also provide the zip code using the zip code plus four code (Zip+4).

Applicants can obtain a DUNS number by calling (866) 705–5711 (this is a toll-free number). The approximate time to get a DUNS number is 10 to 15 minutes, and there is no charge. After obtaining your DUNS number, applicants should wait 24 to 48 hours to register with the CCR so that its DUNS number has time to become activated in the D&B records database.

2. *Step Two:* Register with the CCR. The second step of the registration process is registering with the CCR. The CCR is the primary vendor database for the Federal Government. An organization planning to submit a grant application must register or annually update or renew its registration with CCR to establish roles and IDs for representatives that will use Grants.gov to submit electronic grant applications. If you need assistance with the CCR registration process, you can contact the CCR Assistance Center, 24 hours a day, 7 days a week at (888) 277–2423 or (269) 961–5757. Applicants can also obtain assistance online at *www.ccr.gov*. A CCR Handbook that guides applicants through the registration process is available on the CCR Web site by clicking on ''Help.'' If you fail to update/renew your CCR registration, your Grants.gov registration will lapse and you will not be able to submit an application for funding. Registration, including update/renewal can take several weeks as CCR compares its records to those maintained by D&B and IRS. If discrepancies arise, Step Two cannot be completed until the discrepancies are resolved. For this reason, HUD urges applicants to complete the CCR registration, or update/renew its existing registration, immediately. Otherwise, the CCR check with D&B and IRS records may delay your completing the registration process and adversely affect your ability to submit your grant application.

The CCR registration process consists of completing a Trading Partner Profile (TTP), which contains general, corporate, and financial information about your organization. When completing the TTP, you will be required to identify an eBusiness Point of Contact (eBusiness POC), responsible for maintaining the information in the TTP and granting authorization to individuals to serve as Authorized Organization Representatives (AORs). An AOR is the individual who will submit the application through Grants.gov for the applicant organization. Applicants can check the CCR registration and eBusiness POC by going to *http://www.ccr.gov* and searching by clicking on ''Search CCR.''

a. CCR Use of D&B Information. In July 2006, CCR implemented a policy change. Under this policy change, instead of obtaining name and address information directly from the registrant, CCR obtains the following data fields from D&B: Legal Business Name; Doing Business as Name (DBA); Physical Address; and Postal Code (Zip+4). Registrants will not be able to enter or modify these fields in CCR as they will be pre-populated using previously registered Dun and Bradstreet Data Universal Numbering System (DUNS) records data. During a new registration, or when updating a record, the registrant has a choice to accept or reject the information provided from the D&B records. If the registrant agrees with the D&B supplied information, the D&B data will be accepted into the CCR registrant record. If the registrant disagrees with the D&B supplied data, the registrant must go to the D&B Web site at *http://fedgov.dnb.com/webform* to modify the information contained in D&B's records before proceeding with its CCR registration. Once D&B confirms the updated information, the registrant must revisit the CCR Web site and ''accept'' D&B's changes. Only at this point will the D&B data be accepted into the CCR record. This process can take up to 2 business days for D&B to send modified data to CCR, and that time frame may be longer if data is sent from abroad.

b. CCR EIN/TIN Validation. To complete your CCR registration and qualify as a vendor eligible to bid for federal government contracts or apply for federal grants, the EIN/TIN and Employer/Taxpayer Name combination you provide in the IRS Consent Form must match exactly to the EIN/TIN and Employer/Taxpayer Name used in federal tax matters. It will take one to two business days to validate new and updated records prior to becoming active in CCR. Please be sure that the data items provided to D&B match information provided to the IRS. If the registration in D&B and the CCR does not match the IRS information, an error message will result. Until the discrepancies have been resolved, your registration will not be completed. HUD recommends that applicants carefully review their D&B and CCR registration information for accuracy immediately upon publication of this notice. If you have questions about your EIN/TIN, call (800) 829–4933.

c. Detailed Steps to Register with CCR. The following is a step-by-step guide to help you register with CCR. As noted, additional assistance is available online at *http://www.ccr.gov.*

(1) Go to *http://ccr.gov/.* Once on the site, on the left side of the screen, click ''Start New Registration.'' At the ''Start a New Registration'' screen, of the three choices, please select ''I am not a U.S. Federal Government entity.'' Click ''Continue.''

Note: CCR registration is NOT required for individuals. Applicants should be aware that HUD does not directly fund individuals through its NOFA process.

(2) The next screen provides review items that must be completed before continuing in CCR. After you review the information and all items have been completed, click ''Continue with Registration.''

(3) To begin your registration with CCR, enter your DUNS number and click ''Next.''

(4) At the next screen, ''New Registration,'' you will be prompted to enter your DUNS number. Then click ''Next.'' The next ''New Registration'' screen displays your DUNS number. You will be prompted to enter your organization information, e.g., name, address, etc. If the information you inputted does not match that contained in the D&B record for the DUNS number provided, the system will state: ''Try again by correcting your input below'' OR ''Contact D&B to make a change to your D&B DUNS record.''

(5) The next page of ''New Registration'' is ''Verify Your Results with D&B''. Here you will be asked, ''Is this information correct?'' After ensuring the accuracy of the information, click on ''Accept/Continue'' or ''Cancel.''

(6) If you ''Accept/Continue,'' your confirmation number will be displayed. This is a temporary number that allows you to save your registration as a work in progress. Print this page. Your temporary number along with your DUNS number will let you access CCR

to complete your registration at a later date.

(7) Continuing your registration from the Confirmation page, click ''Continue.''

(8) ''How to Complete your Registration'' is the next page. Once you have reviewed the information and it is correct, click ''continue.''

(9) The ''General Information'' page is the next screen. On this page you will need to complete all the required information.

(10) Creating a Marketing Partner ID Number (MPIN). The final step in creating your Trading Partner Profile (TTP) requires that you create a Marketing Partner ID Number (MPIN). The MPIN is a self-defined nine character password that the eBusiness POC will need to access Grants.gov to authorize an AOR to be able to submit a grant application.

(11) Registration Notification. If your registration was submitted successfully, you will receive two letters via the U.S. Mail or e-mail. The first welcomes you to CCR and includes a copy of your registration. The second contains your confidential Trading Partner Identification Number (TPIN). Receipt of your TPIN confirms that you are successfully registered in CCR and serves as your confidential password to change CCR information.

d. Current Registrants without an MPIN. If you currently have an active registration in CCR and you do not have an MPIN, you will need to do the following:

(1) Access the CCR Web site at *http://www.ccr.gov.* At the left margin, click on ''Update or Renew Registration.''

(2) Select ''I am not a U.S. Federal Government entity. Click ''Continue.''

(3) Enter you DUNS number and TPIN.

(4) On the next page click on the link ''Points of Contact.'' Complete all fields for the eBusiness POC and the alternate eBusiness POC. Scroll down to the bottom of the Points of Contact page, and create your own MPIN. Once completed, click on the ''Validate/Save'' button.

3. *Step Three: Register with the Credential Provider.* To safeguard the security of your electronic information, Grants.gov utilizes a Credential Provider to determine with a degree of assurance that someone is really who he or she claims to be. An assigned AOR must register with the Credential Provider to create his/her user name and password, which are needed to submit an application with an electronic signature via Grants.gov. To register with a credential provider, the AOR must have the applicant organization's DUNS number. Your organization will need to have your organization's DUNS number available and be registered with the CCR to complete this process.

Since August 30, 2007, organizations have three federally approved credential providers available from which to choose their authentication services—the Agriculture Department; the Office of Personnel Management's Employee Express; and Operational Research Consultants (ORC), Inc., which also provided authentication services prior to August 30, 2007. Users who already hold a Grants.gov user name and password through ORC will not experience much change. New Users will be able to choose from any of the three credential providers available.

- To register with a credential Provider go to *http://apply07.grants.gov/apply/ORCRegister.* Once you have accessed the site, scroll down the page and enter the DUNS number, and click on ''Register''.
- At the next screen scroll down and select ''Get Your Credentials''.
- On the ''eAuthentication User Information'' screen, complete and submit all information.
- On the next screen you need to confirm your information and create your own USER ID and PASSWORD. Then click ''Submit.'' If all the information has been entered correctly, you will receive a notice of Registration Success.

Note: Your registration is not complete until Steps Four and Five below are completed.

4. *Step Four: Register with Grants.gov.* After completing Step 3, creating a User Name and Password with the credential provider, the person(s) named by the applicant organization to submit an application for funding on behalf of the organization, must register with Grants.gov. After the AOR registers their User ID and Password with Grants.gov, the organization's eBusiness POC will be sent an e-mail indicating that someone has requested authority to submit an application for the organization and has registered as an AOR. Applicants can register with Grants.gov at *https://apply07.grants.gov/apply/GrantsgovRegister.*

5. *Step Five: Granting Approval of an AOR to Submit an Application on Behalf of the Organization.* The eBusiness POC must log into the Grants.gov Web site and give the registered AOR approval to submit an application to Grants.gov. By authorizing the AOR to submit on behalf of the organization, the organization is stating that the person has the legal authority to submit the electronic application and can make a legally binding commitment for the organization.

a. The eBusiness POC must approve the designated AOR(s). If the eBusiness POC does not grant authorization, Grants.gov will not accept the application. The eBusiness POC can designate the AOR to submit applications on behalf of the organization at *https://apply07.grants.gov/apply/AorMgrGetID.* The registration is complete when an AOR has been approved to submit an application on behalf of the applicant organization by the eBusiness POC.

HUD urges applicants to check with their eBusiness POC to make sure that they have been authorized to make a legally binding commitment for the applicant organization when submitting the application to Grants.gov. This is particularly important if during the CCR registration renewal process the eBusiness Point of Contact for the applicant organization has been changed. The new eBusiness Point of Contact will have to grant authorization to all AORs. You can search the CCR registration for the eBusiness Point of Contact by going to *https://www.bpn.gov/CCRSearch/Search.aspx.*

b. AORs can track their AOR status at any time on Grants.gov by going to the Applicant home page at Grants.gov. In ''Quick Links'' log in as an applicant and enter your User Name and Password. If you have not been granted AOR status by the eBusiness POC, you should contact the eBusiness POC directly.

II. Instructions on How To Download an Application Package and Application Instructions at Grants.gov

Applicants should sign up to be notified when HUD places a funding opportunity on Grants.gov or does a technical correction or an amendment to an opportunity on Grants.gov by signing up for the e-mail notification service at *http://www.grants.gov/applicants/e-mail_subscription.jsp.* HUD recommends that all applicants sign up for this notification service.

Applicants that have not signed up for the notification service can search for a funding opportunity on Grants.gov by going to *http://www.grants.gov/applicants/find_grant_opportunities.jsp.* On this page you can do a basic search, browse by category, or browse by agency. If you are interested in HUD Grants, click on browse by agency and then scroll down the page until you see U.S. Department of Housing and Urban Development on the right column.

When you click on the HUD agency name, you will come to a page with all the funding opportunities that are posted by HUD at that point in time. When you click on an opportunity, you will come to a page that provides a synopsis of the opportunity and which also identifies the Catalog of Federal Domestic Assistance (CFDA) Number for the Program, the Funding Opportunity Number and further down the page, a link to the full announcement. To download the application and instructions, follow the directions below, but first you must be sure you have the compatible Adobe Reader installed. HUD's 2008 applications will be using Adobe forms. To open and complete the application package you must have installed Adobe Reader 8.1.2 or higher. Adobe Reader 8.1.2 is available free and can be found on the Grants.gov Web site at *http://www.grants.gov/help/download_software.jsp*. You will not be able to complete or submit your application if you fail to download the free Adobe Reader 8.1.2 (or higher version available on Grants.gov). Please make anyone that will be working on the Adobe forms portion of the application aware that they must download the new 8.1.2 Adobe Reader. This does not impact forms that you may save as PDF forms to your application as attachments. Adobe Reader 8.1.2 is compatible with Adobe Professional versions. However, for the newest reader to work, you must be sure that your Adobe default setting for the Reader is set to the Adobe 8.1.2 version. For information on how to set your default settings, go to *https://grants.gov/help/general_faqs.jsp#19*. Follow Option #2, labeled ''Set Your Computers Default to Use the Correct Version of Adobe Reader for the opening of all files with a PDF extension''.

Applicants are urged to review the Adobe Reader 8.1.2 information and get the new reader installed on their computer when this Notice is published so that they are prepared for the FY 2008 NOFAs when they are published in the Spring of 2008.

A. *Application Package and Application Instructions Download.* Once you have installed Adobe Reader 8.1.2 you can download the Application Package and instructions. To download the application and instructions go to *https://apply07.grants.gov/apply/forms_apps_idx.html* and enter the CFDA Number, Funding Opportunity Number, or Funding Competition ID for the opportunity you are interested in; do not enter more than one criterion. If you enter more than one criterion, you will get a message that states the opportunity cannot be found. Only enter one of the above numbers.

On the next page ''Selected Grant Applications for Download,'' you will find the funding opportunity link to Download Instructions and Application. Additional resource information is also on this page, including a reminder to sign up for e-mail notification for changes to funding opportunity, a download link to the Adobe Reader as well as a Help link.

Click on the Download link to get to the Download page. Then proceed to download the instructions and the application. If you get an error message in opening the downloaded application, you have not properly installed the Adobe Reader 8.1.2. Contact your IT help desk or the Grants.gov support desk at *Support@Grants.gov* by e-mail or by calling 800–518–GRANTS.

B. *Download Instructions Link.* The instructions download is a compressed file (ZIP) containing the General Section and Program Sections for the funding opportunity. It also contains forms and copies of the General Section and Program Section of HUD's NOFAs, information that you will need to submit a complete application to Grants.gov for HUD funding consideration. For each program, NOFA provides a checklist which you can use to ensure that you have completed all elements of your application. HUD's General Section provides helpful information and tips to ensure that you complete your application correctly and what to do to ensure that all your information is attached to the application. When attaching files to your application, HUD suggests that you open each attachment file and scroll down to make sure it is the complete file that you want to submit.

C. *Compatibility with Apple Macintosh computers, Microsoft Windows Vista operating system, and Microsoft Office 2007.* HUD moved to the Adobe forms application in FY 2008 because the forms are compatible with the broadest array of computer hardware and software technology currently in use by HUD's applicant/grantee community. For information on Adobe compatibility go to *http://www.grants.gov/help/download_software.jsp*. Applicants can test if they have the software installed properly by going to *http://www.grants.gov/applicants/AdobeVersioningTestOnly.jsp.*

Questions regarding the installation of Adobe Reader 8.1.2 should be directed to the Grants.gov help desk during operating hours Monday–Friday (except Federal holidays) from 7 a.m. to 9 p.m. at 800–518–GRANTS.

Dated: February 28, 2008.

Keith A. Nelson,

Assistant Secretary for Administration.

[FR Doc. E8–4724 Filed 3–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4679–N–14]

Multifamily Mortgage Insurance Premiums; Withdrawal of Proposal To Implement Changes in Mortgage Insurance Premiums for FY2008

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: On October 18, 2007, HUD published, for public comment, a notice announcing proposed changes in the mortgage insurance premiums (MIP) for certain Federal Housing Administration (FHA) multifamily mortgage insurance programs whose commitments will be issued or reissued in Fiscal Year (FY) 2008. Based on consideration of the concerns raised in the public comments, HUD has decided not to proceed with implementation of the proposed MIP increases for FY2008. The MIPs in effect during FY2006 and FY2007 will be the same rates applied to commitments issued or reissued in FY2008.

FOR FURTHER INFORMATION CONTACT: Eric Stevenson, Director, Policy Division, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, Telephone: (202) 708–1142 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR 207.252, 207.252a, and 207.254 provide that instead of setting the MIP at one specific rate for all programs, the Secretary is permitted to change an MIP program by program within the full range of HUD's statutory authority of one fourth of one percent to one percent of the outstanding mortgage principal per annum through a notice, as provided in section 203(c)(1) of the National Housing Act (the Act) (12 U.S.C. 1709(c)(1)). The regulation at 24 CFR 207.254 states that HUD will provide a 30-day period for public comment on

notices changing MIPs in multifamily insured housing programs.

On October 18, 2007 (72 FR 59150), HUD published a notice that proposed changes in MIPs for certain FHA multifamily mortgage insurance programs whose commitments will be issued or reissued in FY2008. HUD provided a 30-day public comment period which closed on November 19, 2007. HUD received approximately 179 comments, which included letters from members of Congress, trade associations and other interested members of the public. All commenters expressed opposition to the proposed changes. Based on consideration of the concerns raised in public comments, HUD has decided not to proceed with implementation of the proposed MIP increases for FY2008. The MIPs originally published on August 30, 2005 (70 FR 51538) and in effect during FY2006 and FY2007 will be the same rates applied to commitments issued or reissued in FY2008, and are set out in Section II of this notice.

II. FY2008 Mortgage Insurance Premiums

The mortgage insurance premiums to be in effect for FHA firm commitments issued or reissued in FY 2008 are shown in the table below. For all projects with low-income housing tax credits (LIHTC) the sponsor is required under the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235 (approved December 15, 1989)) and HUD's implementing instructions to submit a certification regarding governmental assistance with all multifamily mortgage insurance applications.

FISCAL YEAR 2008 MIP RATES—MULTIFAMILY LOAN PROGRAM

Loan program	Basis points
207 Multifamily Housing NC/SR without LIHTC	50
207 Multifamily Housing NC/SR with LIHTC	45
207 Manufactured Home Parks without LIHTC	50
207 Manufactured Home Parks with LIHTC	45
221(d)(3) Nonprofit/Cooperative mortgagor without LIHTC	80
221(d)(3) Limited dividend with LIHTC	45
221(d)(4) NC/SR without LIHTC	45
221(d)(4) NC/SR with LIHTC	45
232 NC/SR Health Care Facilities without LIHTC	57
232 NC/SR—Assisted Living Facilities with LIHTC	45
220 Urban Renewal Housing without LIHTC	50
220 Urban Renewal Housing with LIHTC	45
213 Cooperative	50
231 Elderly Housing without LIHTC	50
231 Elderly Housing with LIHTC	45
207/223(f) Refinance or Purchase for Apartments without LIHTC	*45
207/223(f) Refinance or Purchase for Apartments with LIHTC	*45
232/223(f) Refinance for Health Care Facilities without LIHTC	*50
232/223(f) Refinance for Health Care Facilities with LIHTC	*45
223(a)(7) Refinance of Apartments without LIHTC	45
223(a)(7) Refinance of Apartments with LIHTC	45
223(a)(7) Refinance of Health Care Facilities without LIHTC	50
223(a)(7) Refinance of Health Care Facilities with LIHTC	45
223d Operating loss loan for Apartments	80
223d Operating loss loan for Health Care Facilities	80
241(a) Improvements/additions for Apartments/coop without LIHTC	80
241(a) Improvements/additions for Apartments/coop with LIHTC	45
241(a) Improvements/additions for Health Care Facilities without LIHTC	57
241(a) Improvements/additions for Health Care Facilities with LIHTC	45
242 Hospitals	50
Title XI—Group Practice	50

*The First Year MIP for the section 207/223(f) loans for apartments is one percent for the first year, as specified in sections 24 CFR 207.232b(a). The first year MIP for 232/223(f) health care facilities is one percent.

Credit Subsidy

A credit subsidy obligation is required for the three sections of the Act listed below. If the mortgagor's equity is produced from LIHTC for sections 221(d)(3) and 241(a), a credit subsidy obligation will not be required.

- Section 221(d)(3) for new construction or substantial rehabilitation (NC/SR).
- Section 223(d) for operating loss loans for both apartments and health care facilities.
- Section 241(a) for supplemental loans for additions or improvements for apartments only.

Dated: February 29, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. E8–4600 Filed 3–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19154–8; AK–964–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain

lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation, Inc. The lands are in the vicinity of Shungnak, Alaska, and are located in:

T. 18 N., R. 6 E.,
Secs. 16, 17, 20, and 21.
Containing approximately 160 acres.

Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 9, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Crystal Arroyo,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–4715 Filed 3–7–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–08–1310–NB–016K]

Notice of Meetings of the Pinedale Anticline Working Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) will meet in Pinedale, Wyoming, for business meetings. Group meetings are open to the public.

DATES: The PAWG will meet on the following dates beginning at 1 p.m.: May 29, 2008; July 24, 2008; September 25, 2008; and October 23, 2008.

Further, the Annual Tour will be held on June 20th. The tour will start at the BLM Pinedale Field Office at 8:30 am.

ADDRESSES: The meeting of the PAWG will be held at the BLM Pinedale Field Office, 1625 West Pine Street, Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Caleb Hiner, BLM/PAWG Liaison, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, PO Box 768, Pinedale, WY 82941; 307–367–5352.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field proceeds for the life of the field.

The agendas for these meetings will include discussions concerning any modifications task groups may wish to make to their monitoring recommendations and overall adaptive management implementation as it applies to the PAWG. At a minimum, public comments will be heard prior to adjournment of each meeting.

Dated: March 4, 2008.

Chuck Otto,

Field Office Manager.

[FR Doc. E8–4717 Filed 3–7–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 117830]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) has filed an application requesting the Secretary of the Interior to withdraw 20 acres of public land from the mining laws for a period of 20 years to protect a Border Patrol Forward Operating Base in Luna County, New Mexico, and to convey jurisdiction of the land to the DHS. This notice temporarily segregates the land for up to 2 years from location and entry under the mining laws while the 20-year withdrawal application is being processed.

DATES: Comments and requests for a public meeting must be received by June 9, 2008.

ADDRESSES: Comments and meeting requests should be sent to the Bureau of Land Management (BLM) Las Cruces District Manager, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Lori Allen, BLM Las Cruces District Office, 575–525–4454 or at the above address.

SUPPLEMENTARY INFORMATION: The applicant for the above withdrawal is the DHS. The application asks the Secretary of the Interior to withdraw, for a period of 20 years, the following described public land from location and entry under the United States mining laws, subject to valid existing rights:

Deming Forward Operating Base

New Mexico Principal Meridian

T. 29 S, R. 12 W.,
Section 3: E½SW¼NE¼.

The area described aggregates 20 acres in Luna County.

The application is a withdrawal proposal of the Secretary of the DHS (43 CFR 2310.1–2). The purpose of the withdrawal is to provide the agents at the Deming Station facilities that would improve response times, increase shift time, expedite illegal alien processing, and provide increased safety and protection of the agents and detainees. The withdrawal is needed to convey jurisdiction of the land to the DHS and to protect the Federal investment in the facilities.

A right-of-way or cooperative agreement would not adequately constrain nondiscretionary uses and would not provide sufficient protection of the Federal investment in the improvements.

The site proposed for withdrawal is strategically located and provides for the most direct access, via existing ranch roads, to the border in areas of high smuggling and illegal alien activity. The site is adjacent to a major roadway; and electric utilities are nearby. There are no better locations for the forward operating base.

Records relating to the proposed withdrawal can be examined by contacting Lori Allen at the above address or phone number.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Las Cruces District Manager at the address listed above by June 9, 2008. Comments, including names and street addresses of respondents, will be available for public review at the BLM Las Cruces District Office at the address listed during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Las Cruces District Manager at the address listed above by June 9, 2008. If the authorized officer determines a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

Licenses, permits, cooperative agreements, and other discretionary land use authorizations may be allowed during the segregative period, but only with the approval of a BLM official and with the concurrence of an authorized officer of the DHS, Border Patrol.

This withdrawal proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

(Authority: 43 CFR 2310.3–1)

Bill Childress,

District Manager, Las Cruces.

[FR Doc. E8–4602 Filed 3–7–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–05–1220–EB–CO–]

Notice To Establish Special Recreation Permit Application, Renewal and Transfer Fees for Commercial, Competitive, or Organized Group Activities and Events; Colorado

AGENCY: Bureau of Land Management, Colorado State Office.

ACTION: Notice.

SUMMARY: The Colorado State Office of the Bureau of Land Management (BLM) plans to implement Special Recreation Permit (SRP) fees. The fees will establish standard statewide application, transfer, and renewal fees for SRPs. The fees apply to commercial, competitive, or organized group activities and events on BLM lands, and revenues will be used to help offset the cost of processing SRPs. Field offices will also be allowed to keep more revenues that would benefit on-the-ground work, including an increased law enforcement presence, hiring seasonal employees, and site improvements. Currently, there is no statewide SRP fee. This new fee will not affect cost recovery charges when the 50-hour cost recovery threshold is anticipated to be exceeded. The fees are:

- New SRP—$100
- SRP Renewal (re-issuance of expired permits)—$50
- SRP Transfer from one person to another person—$100

These fees do not apply to individual SRPs authorizing use of designated Special Use Areas. Also, no fees are charged for annual operating authorizations.

Future adjustments in the fee amount will be made based on inflation and local market trends. Consultation will be made with Colorado's three Resource Advisory Committees and appropriate public notices will be posted prior to a fee increase.

DATES: The SRP Application Fee Proposal was published in the **Federal Register** on September 11, 2007, as a proposed supplementary rule. The comment period was open through November 13, 2007. The new fees will go into effect on March 10, 2008.

FOR FURTHER INFORMATION CONTACT: Jack Placchi, Outdoor Recreation Planner, Bureau of Land Management, Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215, (303) 239–3832.

SUPPLEMENTARY INFORMATION:

Background

All commercial, competitive or organized group activities, special events, and special area use on BLM public lands require a Special Recreation Permit (SRP). The BLM Colorado manages over 800 commercial, competitive, and organized group activity and event SRPs annually.

BLM Colorado is implementing a new SRP application fee for the issuance of new permits, and for the transfer and renewal of existing permits. The new administrative fees are $100 for a new permit, $50 for a permit renewal, and $100 for a permit transfer. The average cost to existing permit holders will be $10 per year, as most permits are renewed every 5 years. This fee does not apply to individual SRPs issued for special area use.

A statewide application fee will make the cost of applying for and receiving a commercial, competitive, or organized group activity and event SRP consistent at all the BLM Colorado field offices..

The fees collected under statewide application will be kept at the site to augment recreation opportunities for the public. Both public and private outfitters will benefit from the fee through the BLM's increased law enforcement capabilities, additional funds for signing and interpretive education, and a greater BLM field presence to control illegal operations on BLM-managed public lands.

Pursuant to 43 CFR 2932.31(d)(1)–(4), and BLM Manual, H–2930–1 Recreation Permit Administration Page 27 paragraph f. (1), the State Director has the authority to set and adjust fees for SRPs. Direction from the BLM's ''Priorities for Recreation and Visitor Services (Purple Book), Goal 3: Provide for and Receive Fair Value in Recreation'' also encourages the implementation of such fees.

Comments Received on Proposed Supplementary Rule

Only one comment was received regarding the proposed fee. The commenter had two concerns:

1. That the fee should be $250.00

To determine an appropriate fee structure, the BLM interviewed BLM SRP managers across Colorado. Those interviewed included recreation permit and license managers of local and regional recreational programs including Arkansas Headwaters State Recreation Area, Colorado Department of Regulatory Affairs, and Colorado State Parks River Outfitter Licensing Program. The BLM also interviewed the Executive Director of the Colorado

Outfitters Association. As a result of these consultations, we believe the proposed fee structure is appropriate.

2. That the BLM not sanction any animal abuse in permitted events

The BLM does not sanction the abuse of animals and complies with all state and Federal laws regarding livestock and other animals. There is no need to change the fee structure based on this comment.

Sally Wisely,

Colorado State Director.

[FR Doc. E8–4604 Filed 3–7–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Headquarters, Cape Wind Energy Project 2008

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of public comment period.

DATES: Comments must be received no later than April 21, 2008.

SUMMARY: The Minerals Management Service hereby gives notice that it is extending the public comment period for the Cape Wind Energy Project Draft Environmental Impact Statement (DEIS), which was published in the **Federal Register** on January 18, 2008, (Volume 73, No. 13) for an additional 30 days. Please see the Notice of Availability of the DEIS (73 FR 3482) for more detailed information related to the Cape Wind Energy Project. In response to requests for additional time, the MMS will extend the comment period from March 20, 2008, to April 21, 2008.

Federal, State, tribal, and local governments and other interested parties are requested to comment on the DEIS. Comments will be accepted through the MMS Web site, by mail or in person at the public hearings as stated below.

1. Electronically using MMS's on-line commenting system at: *http://ocsconnect.mms.gov/pcs-public/.* This is the preferred method for commenting.

2. In written form, mailed or delivered to MMS Cape Wind Energy Project, TRC Environmental Corporation, Wannalancit Mills, 650 Suffolk Street, Lowell, Massachusetts 01854.

3. In person at the public hearings.

Public Hearings: The MMS will hold public hearings to receive comments on the DEIS. The public hearings are scheduled as follows:

- Monday, March 10, 2008 at Mattacheese Middle School Auditorium, 400 Higgins-Crowell Road, West Yarmouth, Massachusetts, 6 p.m.
- Tuesday, March 11, 2008 at Nantucket High School Auditorium, 10 Surfside Road, Nantucket, Massachusetts, 5 p.m.
- Wednesday, March 12, 2008 at Martha's Vineyard Regional High School Auditorium, 100 Edgartown-Vineyard Haven Road, Oak Bluffs, Massachusetts, 5 p.m.
- Thursday, March 13, 2008 at Campus Center Ballroom, University of Massachusetts, Boston, 100 Morrissey Boulevard, South Boston, Massachusetts, 6 p.m.

Correction: The January 18, 2008, **Federal Register** Notice indicated that pre-registration would be available prior to the public hearings. There is no pre-registration for the public hearings. Registration for the public hearings will begin one hour before each hearing starts.

FOR FURTHER INFORMATION CONTACT: Dr. Rodney E. Cluck, Minerals Management Service, Alternative Energy Program, 381 Elden Street, Mail Stop 4080, Herndon, Virginia 20170, or by phone at (703) 787–1300.

Dated: March 4, 2008.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. E8–4700 Filed 3–7–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council Within the Alaska Region

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council within the Alaska Region.

SUMMARY: The National Park Service (NPS) announces a meeting of the Denali National Park and Preserve Aircraft Overflights Advisory Council. The purpose of this meeting is to discuss mitigation of impacts from aircraft overflights at Denali National Park and Preserve. This meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments. The meeting will be recorded and a summary will be available upon request from the Superintendent for public inspection approximately six weeks after each meeting. The Aircraft Overflights Advisory Council is authorized to operate in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The Denali National Park and Preserve Aircraft Overflights Advisory Council meeting will be held on Thursday, April 10, 2008, from 10 a.m. to 5 p.m., Alaska Standard Time. The meeting may end early if all business is completed.

Location: Talkeetna Alaskan Lodge, Mile 12.5 Talkeetna Spur Road, Talkeetna, Alaska 99676. Telephone: (907) 733–9500.

FOR FURTHER INFORMATION CONTACT: Miriam Valentine, Denali Planning. E-mail: *Miriam_Valentine@nps.gov*. Telephone: (907) 733–9102 at Denali National Park, Talkeetna Ranger Station, P.O. Box 588, Talkeetna, AK 99676. For accessibility requirements please call Miriam Valentine (907) 733–9102.

SUPPLEMENTARY INFORMATION: Meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers.

The agenda for the meeting will include the following, subject to minor adjustments:

1. Call to order.
2. Roll Call and Confirmation of Quorum.
3. Chair's Welcome and Introductions.
4. Review and Approve Agenda.
5. NPS report on FACA parameters.
6. Member Reports.
7. Agency and Public Comments.
8. Superintendent and NPS Staff Reports.
9. Agency and Public Comments.
10. Updating Priorities for Advisory Council Work.
12. Agency and Public Comments.
13. Other New Business.
14. Agency and Public Comments.
16. Set time and place of next Advisory Council meeting.
17. Adjournment.

Dated: February 14, 2008.

Marcia Blaszak,

Regional Director, Alaska Region, National Park Service.

[FR Doc. E8–4710 Filed 3–7–08; 8:45 am]

BILLING CODE 4310–PF–P

DEPARTMENT OF THE INTERIOR

National Park Service

Schedule of Wekiva River System Advisory Management Committee Meetings (2008)

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of upcoming scheduled meetings.

SUMMARY: This notice announces a schedule of upcoming meetings for the Wekiva River System Advisory Management Committee.

DATES: The meetings are scheduled for: April 8, 2008, June 4, 2008, August 5, 2008, October 1, 2008 and December 2, 2008.

Time: All scheduled meetings will begin at 6 p.m.

ADDRESSES: All scheduled meetings will be held at Sylvan Lake Park, 845 Lake Markham Rd., Sanford, FL 32771. Sylvan Lake Park is located off Interstate 4 at Exit 51 (SR 46). Take SR 46 West to Lake Markham Rd. Turn left on Lake Markham Rd and continue one mile to Sylvan Lake Park on the left. Call (407) 322–6567 or visit *http://www.seminolecountyfl.gov/leisure/parks/index.asp* for additional information on this facility.

FOR FURTHER INFORMATION CONTACT: Jaime Doubek-Racine, DFO, Wekiva Wild and Scenic River, RTCA Program, Florida Field Office, Southeast Region, 665 South Orange Avenue, Suite 8, Sarasota, Florida 34236, tel. (941) 330–8047.

SUPPLEMENTARY INFORMATION: The scheduled meetings will be open to the public. Each scheduled meeting will result in decisions and steps that advance the Wekiva River System Advisory Management Committee towards its objective of developing a Comprehensive Management Plan for the Wekiva Wild and Scenic River. Any member of the public may file with the Committee a written statement concerning any issues relating to the development of the Comprehensive Management Plan for the Wekiva Wild and Scenic River. The statement should be addressed to the Wekiva River System Advisory Management Committee, National Park Service, 665 South Orange Avenue, Suite 8, Sarasota, Florida 34236.

The Wekiva River System Advisory Management Committee was established by Public Law 106–299 to assist in the development of the comprehensive management plan for the Wekiva River System and provide advice to the Secretary in carrying out management responsibilities of the Secretary under the Wild and Scenic Rivers Act (16 U.S.C. 1274). Efforts have been made locally to ensure that the interested public is aware of the meeting dates.

Dated: January 14, 2008.

Deirdre Hewitt,

Program Manager, Rivers, Trails & Conservation Assistance Program, Southeast Region.

[FR Doc. E8–4675 Filed 3–7–08; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 23, 2008. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 25, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

IDAHO

Bannock County

Old Town Residential Historic District, Roughly bounded by W. Benton, S. Garfield & W. Lewis Sts., & Portnuef R. Pocatello, 08000249

Latah County

Deesten Farmstead, (Agricultural Properties of Latah County, Idaho) 3611 U.S. 95 S, Moscow, 08000250

Soncarty, Edward and Ida, Barn, (Agricultural Properties of Latah County, Idaho) 1671 Deep Creek Rd., Potlatch, 08000251

Power County

Davie, William, House, (American Falls, Idaho, Relocated Townsite MPS) 703 Hutchinson Ave., American Falls, 08000252

MISSOURI

Cole County

Wallendorf, Joseph and Elizabeth, House, 701 S. Country Club Dr., Jefferson City, 08000253

OREGON

Benton County

Children's Farm Home School, 4455 U.S. 20 NE., Corvallis, 08000254

RHODE ISLAND

Newport County

Stone House Inn, 122 Sakonnet Rd., Little Compton, 08000255

VIRGINIA

James City County

Norge Train Depot, 7770 Croaker Rd., Williamsburg, 08000256

WISCONSIN

Dodge County

Kliese Housebarn, N336 Co. Rd. EM, Emmet, 08000257

Jefferson County

Brandt House, 410 S. 4th St., Watertown, 08000258

[FR Doc. E8–4609 Filed 3–7–08; 8:45 am]

BILLING CODE 4312–51–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–017]

Dominion Virginia Power; Notice of Hearing and Opportunity To Petition for Leave To Intervene on a Combined License for North Anna Unit 3

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' and 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' notice is hereby given that a hearing will be held, at a time and place to be set in the future by the U.S. Nuclear Regulatory Commission (NRC, the Commission) or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the application dated November 26, 2007, filed by Dominion Virginia Power (Dominion), pursuant to Subpart C of 10 CFR part 52, for a combined license (COL). The application, which was supplemented by letters dated January 17 and 28, 2008, requests approval of a COL for North Anna Unit 3 located at the North Anna Power Station in Louisa County,

Virginia. The application was accepted for docketing on January 28, 2008. The docket number established for this application is 52–017.

The hearing will be conducted by a Board that will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or by the Commission. Notice as to the membership of the Board will be published in the **Federal Register** at a later date. The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report. The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.87, ''Referral to the ACRS,'' and the ACRS will report on those portions of the application that concern safety.

Any person whose interest may be affected by this proceeding and desires to participate as a party to this proceeding must file a written petition for leave to intervene in accordance with 10 CFR 2.309.

A petition for leave to intervene must be filed no later than 60 days from the date of publication of this notice in the **Federal Register**. Non-timely filings will not be entertained absent a determination by the Commission or presiding officer designated to rule on the petition, pursuant to the requirements of 10 CFR 2.309(c)(1)(i)–(viii).

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which was promulgated by the NRC on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner must contact the Office of the Secretary by e-mail at: *HearingDocket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding even in instances in which the petitioner (or its counsel or representative) already holds a NRC-issued digital ID certificate. Each petitioner will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on the NRC's public Web site at: *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Standard Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Standard Time, Monday through Friday. The help line number is (800) 397–4209 or locally (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petitions and/or requests should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Standard Time on the due date.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at: *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in the filing. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filing and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Any person who files a motion pursuant to 10 CFR 2.323 must consult with counsel for the applicant and counsel for the NRC staff who are listed below. Counsel for the applicant are Lillian M. Cuoco, Esq., Dominion Resources Services, Inc., Telephone: (804) 819–2684, E-mail: *Lillian_Cuoco@dom.com*, and David R. Lewis, Esq., Pillsbury Winthrop Shaw Pittman LLP, Telephone: (202) 663–8474, E-mail: *david.lewis@pillsburylaw.com.* Counsel for the NRC staff in this proceeding are Robert M. Weisman, Esq., Telephone:

(301) 415–1696, E-mail: *Robert.Weisman@nrc.gov,* and Renee V. Holmes, Esq., Telephone: (301) 415–3319, E-Mail: *Renee.Holmes@nrc.gov.*

A person who is not a party may be permitted to make a limited appearance by making an oral or written statement of his or her position on the issues at any session of the hearing or any pre-hearing conference within the limits and conditions fixed by the presiding officer, but may not otherwise participate in the proceeding.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* The ADAMS accession number for the application is ML073320913. The application is also available at: *http://www.nrc.gov/reactors/new-licensing/col.html.* Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of February 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–4706 Filed 3–7–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and the Resource Conservation and Recovery Act

Under 28 CFR 50.7, notice is hereby given that on February 20, 2008, a proposed Consent Decree (''Consent Decree'') in the matter of *United States* v. *Bridgeport United Recycling, Inc. and United Oil Recovery, Inc.,* Civil Action No. 3:08CV247 (JBA), was lodged with the United States District Court for the District of Connecticut.

In the complaint in this matter, the United States sought injunctive relief and penalties against Bridgeport United Recycling, Inc. (''BUR'') and United Oil Recovery, Inc. (''UOR'') for claims arising under the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6901 *et seq.*, in connection with the operation of BUR's hazardous waste treatment, storage, and disposal facility located in Bridgeport, Connecticut and UOR's hazardous waste treatment, storage, and disposal facility located in Meriden, Connecticut. Under the Consent Decree, BUR will automate and upgrade the air emission control system used at the Bridgeport facility and pay a civil penalty of $205,798.00. Under the Consent Decree, UOR will pay a civil penalty of $119,392.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Bridgeport United Recycling, Inc. and United Oil Recovery, Inc.,* D.J. Ref. No. 90–7–1–08350. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, Connecticut Financial Center, 157 Church Street, Floor 23, New Haven, CT 06510, and at U.S. EPA Region I, Robert F. Kennedy Federal Building, Boston, Massachusetts 02203–2211. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–4608 Filed 3–7–08; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—High Definition Metrology and Process–2 Micron Manufacturing Under ATP Award No. 70NANB7H7041

Notice is hereby given that, on December 13, 2007, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), High Definition Metrology and Process–2 Micron Manufacturing under ATP Award No.70NANB7H7041 has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Engineering and Manufacturing Alliance, Ann Arbor, MI; Coherix Inc., Ann Arbor, MI; Ford Motor Company, Dearborn, MI; and Superior Controls, Plymouth, MI. The general area of planned activity is to develop High Definition Metrology and related manufacturing technologies to realize a significant enhancement in both accuracy and precision in manufacturing, aiming for 2 micron variation in precision manufacturing.

The activities of this venture project will be partially funded by an award from the advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–4394 Filed 3–7–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. UnitedHealth Group Incorporated; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Hold Separate and Asset Preservation Stipulation and Order, and Competitive Impact

Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *UnitedHealth Group Incorporated*, Civil Case No. 08–0322. On February 25, 2008, the United States filed a Complaint alleging that the proposed acquisition by UnitedHealth Group Incorporated (''United'') of Sierra Health Services, Inc. (''Sierra'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the acquisition would substantially reduce competition between the two largest health insurers selling Medicare Advantage health insurance plans to senior citizens in the Las Vegas, Nevada area, resulting in higher prices, less choice, and a reduction in the quality of Medicare Advantage plans sold to the Medicare-eligible population.

The proposed Final Judgment filed with the Complaint requires the parties to divest United's individual Medicare Advantage business in the Las Vegas area to a purchaser that will remain a viable competitor in the market. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Room 215, Washington, DC 20530 (202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (202–307–0001).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

United States District Court for the District of Columbia, United States of America, 1401 H Street, NW. - Suite 4000, Washington, DC 20530, Plaintiff,

v.

UnitedHealth Group Incorporated, 9900 Bren Road East, Minnetonka, MN 55343, and Sierra Health Services, Inc., 2724 North Tenaya Way, Las Vegas, NV 89128, Defendants.

Civil No. 1:08–cv–00322

Judge: Ellen S. Huvelle

Filed: 2/25/2008

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin UnitedHealth Group Incorporated (''United'') from acquiring Sierra Health Services, Inc. (''Sierra''), and alleges as follows:

1. Unless enjoined, United's proposed acquisition of Sierra will substantially increase concentration in an already highly concentrated market that is no broader than Medicare Advantage health insurance plans sold to senior citizens (''seniors'') and other Medicare-eligible individuals in Clark and Nye Counties, Nevada, (''the Las Vegas area''). As defined by Federal law, Medicare Advantage plans consist of Medicare Advantage health maintenance organization plans (''MA–HMO''), Medicare Advantage preferred provider organization plans (''MA–PPO''), and Medicare Advantage private fee-for-service plans (''MA–PFFS''). See 42 U.S.C. 1395w–21(a)(2). United and Sierra together account for approximately 94 percent of the total enrollment in Medicare Advantage plans in the Las Vegas area, which total accounts for approximately $840 million in annual commerce.

2. Congress created the Medicare Advantage program as a private market alternative to government-provided traditional Medicare. In establishing the Medicare Advantage program, Congress intended that vigorous competition among private Medicare Advantage insurers would lead insurers to offer seniors richer and more affordable benefits than traditional Medicare, provide a wider array of health insurance choices, and be more responsive to the demands of seniors.

3. The acquisition will decrease competition substantially among Medicare Advantage plans in the Las Vegas area and eliminate substantial head-to-head competition between United (through the PacifiCare health insurance business that United acquired in 2005) and Sierra in the provision of such plans. The competition between United and Sierra has, for years, benefited thousands of seniors. Through competition, United's and Sierra's plans provide seniors with substantially greater benefits than those available under traditional Medicare alternatives, saving seniors thousands of dollars in yearly health care costs. The proposed acquisition will end that competition, eliminating the pressure that these close competitors place on each other to maintain attractive benefits, lower prices, and high-quality health care.

4. United's acquisition of Sierra is likely to reduce competition substantially in the sale of Medicare Advantage plans in the Las Vegas area in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Accordingly, the United States seeks an order permanently enjoining the transaction.

I. Jurisdiction and Venue

5. The United States files this Complaint pursuant to Sections 15 and 16 of the Clayton Act, as amended, 15 U.S.C. 25 and 26, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

6. United and Sierra are engaged in interstate commerce and in activities that substantially affect interstate commerce. The Court has jurisdiction over this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337.

7. United and Sierra transact business and are found in the District of Columbia. Venue is proper under 15 U.S.C. 22 and 28 U.S.C. 1391(c).

II. The Defendants and the Proposed Transaction

8. United is a corporation organized and existing under the laws of Minnesota and has its principal place of business in Minnetonka, Minnesota. United is the largest health insurer in the United States, providing health insurance and other services to more than 70 million people nationwide. In 2007, United reported revenues of approximately $75 billion.

9. United's Medicare Advantage products are sold under the Secure Horizons and AARP brands. United provides health insurance to approximately 27,800 Medicare Advantage enrollees in the Las Vegas area. Approximately 26,000 of these enrollees are individual enrollees whose enrollment is not affiliated with an employer or other group. The remainder are group retirees who enrolled in a United Medicare Advantage plan through an employer or other group.

10. In the Las Vegas area, United has a well-established managed-care network that United uses to provide services to enrollees in its MA–HMO plans. Health care services provided by HealthCare Partners, LLC, The Physicians IPA, Inc., and Summit Medical Group are an integral part of United's managed-care network in the Las Vegas area.

11. Sierra is a corporation organized and existing under the laws of Nevada and has its principal place of business in Las Vegas, Nevada. Sierra is the largest health insurer in Nevada,

providing health insurance and other services to more than 655,000 people. In 2007, Sierra reported revenues of $1.9 billion.

12. Sierra sells Medicare Advantage plans under the Senior Dimensions, Sierra Spectrum, Sierra Nevada Spectrum, and Sierra Optima Select brands. Sierra provides health insurance to approximately 49,500 Medicare Advantage enrollees in the Las Vegas area.

13. Sierra owns Las Vegas's largest medical group, Southwest Medical Associates, Inc. (''SMA''), which employs approximately 250 physicians and other health care professionals. SMA provides care almost exclusively to Sierra members and provides a substantial portion of the care delivered to Sierra's Medicare Advantage members.

14. On March 11, 2007, United and Sierra entered into a merger agreement, whereby United agreed to acquire all outstanding shares of Sierra. The transaction is valued at approximately $2.6 billion.

III. The Medicare Advantage Insurance Market

15. The federal government provides and facilitates the provision of health insurance to millions of Medicare-eligible citizens through two types of programs: traditional Medicare (also known as Original Medicare) and Medicare Advantage. Under traditional Medicare, a beneficiary receives hospital coverage under Medicare Part A and can elect to receive coverage for physician and out-patient services under Part B. For Part A, the government charges no monthly premium if the beneficiary was in the workforce and paid Medicare taxes, but for Part B, the government deducts a monthly premium (currently $96.40 for most beneficiaries) from beneficiaries' Social Security checks. In addition, beneficiaries must pay deductibles and/or co-insurance for doctor visits and hospital stays. If beneficiaries want to limit potentially catastrophic out-of-pocket costs, they need to purchase a separate Medicare Supplement plan. For prescription drug coverage, seniors enrolled in traditional Medicare must purchase Medicare Part D drug coverage for an additional premium.

16. In contrast, Medicare Advantage plans are offered by private insurance companies. These companies compete to offer the most attractive Medicare Advantage benefits to enrollees in a region. Most successful Medicare Advantage plans, including those in the Las Vegas area, offer substantially richer benefits at lower costs to enrollees than traditional Medicare, including lower co-payments, lower co-insurance, caps on total yearly out-of-pocket costs, prescription drug coverage, vision coverage, health club memberships, and other benefits that traditional Medicare does not cover.

17. An insurance company that seeks to offer a Medicare Advantage plan in a region must submit a bid to the Centers for Medicare and Medicaid Services (''CMS'') for each Medicare Advantage plan that it intends to offer. The bid must provide the insurer's anticipated costs per member to cover the basic Medicare Part A and Part B benefits. Those costs, including an anticipated profit margin, are compared to a Medicare benchmark that reflects, in part, the government's likely cost of covering the beneficiaries. If the insurer's bid for Medicare benefits is lower than the benchmark, the Medicare program retains 25 percent of the savings and the insurer must use the other 75 percent to provide supplemental benefits or lower premiums to enrollees. Accordingly, the lower the insurer's projected costs, the more benefits seniors enrolled in the insurer's plan will have available to them.

18. A sufficient number of seniors in the Las Vegas area would not switch away from Medicare Advantage plans to traditional Medicare in the event of a small but significant reduction in benefits under the plans, or a small but significant increase in price, to render the benefit decrease or price increase unprofitable. Accordingly, in the Las Vegas area, the sale of Medicare Advantage plans is a relevant product market and a line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

IV. Relevant Geographic Market

19. Residents in the Las Vegas area (Clark and Nye Counties) may only enroll in Medicare Advantage plans that CMS approves for the county in which they live. Consequently, they could not turn to Medicare Advantage plans elsewhere in the state or in other regions in response to a reduction in competition between Sierra and United in the Las Vegas area. Accordingly, the Las Vegas area is a relevant geographic market or section of the country within the meaning of Section 7 of the Clayton Act.

V. Market Concentration

20. The market for Medicare Advantage plans is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. Sierra accounts for approximately 60 percent of Medicare Advantage enrollees in the Las Vegas area. United accounts for approximately 34 percent. If consummated, the merger would give United a 94 percent market share. The Herfindahl-Hirschman Index (''HHI'') (a standard measure of market concentration defined and explained in Appendix A) for the Las Vegas area Medicare Advantage market indicates that the market is highly concentrated. The proposed merger would increase concentration by 4,080 points, from 4,756 to 8,836.

21. Sierra and United (through PacifiCare) have accounted for well over 90 percent of Medicare Advantage enrollment in the Las Vegas area for each of the past seven years.

VI. Anticompetitive Effects

22. Under the Medicare Advantage program, private competition for Medicare-eligible individuals has produced substantial benefits for consumers throughout the country, including in the Las Vegas area.

23. Sierra and United have competed vigorously with each other to improve their Medicare Advantage plans and attract members. They monitor each other's benefits to stay competitive and consider each other to be very important competitors.

24. United and Sierra compete against each other for newly Medicare-eligible individuals, try to attract members from each other, and seek to avoid losing members to each other, by offering plans with zero premiums, reducing co-payments, eliminating deductibles, improving drug coverage, offering desirable fitness benefits, and attempting to make their provider networks more attractive to potential members. Such competition will be lost in the Las Vegas area if the proposed acquisition is completed, to the substantial detriment of tens of thousands of seniors. After the acquisition, the combined United/Sierra will not have the same incentive to improve benefits as the two separate companies do today, and likely will raise prices or reduce benefits and services.

25. Competition from existing providers of Medicare Advantage plans and new entrants is unlikely to prevent anticompetitive effects. Such firms face substantial cost, reputation, and distribution disadvantages that will likely make them unable to prevent United from raising prices or reducing benefits and services.

26. Accordingly, the proposed transaction likely will substantially lessen competition in violation of Section 7 of the Clayton Act.

VII. Violations Alleged

27. United's acquisition of Sierra would likely substantially lessen competition in the sale of Medicare Advantage health insurance in the Las Vegas area, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

28. The proposed transaction would likely have the following effects, among others:

(a) Lessening substantially actual and potential competition in the sale of Medicare Advantage insurance;

(b) eliminating actual and potential competition between United and Sierra in the sale of Medicare Advantage insurance;

(c) increasing prices for Medicare Advantage insurance above those that would prevail absent the acquisition; and

(d) decreasing the level of benefits and service associated with Medicare Advantage insurance to levels below those that would prevail absent the acquisition.

VIII. Prayer for Relief

The United States requests that this Court:

1. Adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

2. Permanently enjoin and restrain the defendants from carrying out the Agreement and Plan of Merger between United and Sierra dated March 11, 2007, or from entering into or carrying out any agreement, understanding, or plan by which United would merge with or acquire Sierra, its capital stock, or any of its assets;

3. Award the United States the costs of this action; and

4. Award the United States such other relief as the Court may deem just and proper.

Respectfully submitted,

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Antitrust Division

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Richard S. Martin
Natalie A. Rosenfelt
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Trial Attorneys, U.S. Department of Justice, Antitrust Division, Litigation I Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 353–4211, (202) 307–5802 (fax).

Dated: February 25, 2008.

APPENDIX A

Herfindahl-Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30%, 30%, 20%, and 20%, the HHI is 2600 (302 + 302 + 202 + 202 = 2600). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. See Horizontal Merger Guidelines 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. See id.

Certificate of Service

I hereby certify that I served a copy of the foregoing Complaint, proposed Final Judgment, Competitive Impact Statement, Hold Separate and Asset Preservation Stipulation and Order, and Explanation of Consent Decree Procedures via e-mail and first class, United States mail on February 25, 2008.

For Defendant Unitedhealth Group, Inc.:

Robert E. Bloch, Esq., Mayer, Brown, Rowe & Maw, LLP, 1909 K Street, NW., Washington, DC 20006–1101.

Steven L. Holley, Esq., Sullivan & Cromwell, LLP, 125 Broad Street, New York, NY 10004.

For Defendant Sierra Health Services, Inc.:

Arthur N. Lerner, Esq., Crowell & Moring, LLP, 1001 Pennsylvania Ave. NW., Washington, DC 20004.

Peter J. Mucchetti, Attorney, Litigation I Section, U.S. Department of Justice—Antitrust Division.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on February 25, 2008, and the United States and Defendant UnitedHealth Group Incorporated and Defendant Sierra Health Services, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court; *and whereas*, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by Defendants to ensure that competition is not substantially lessened in the sale of Medicare Advantage Plans to senior citizens and others in the Las Vegas, Nevada area;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestiture required by this Final Judgment can and will be made, and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions of this Final Judgment;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, *it is ordered*, Adjudged, and decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom the Divestiture Assets are divested.

B. ''Clark County'' means Clark County, Nevada.

C. ''Clark County CMS Plans'' means the individual Medicare Advantage plans offered under CMS Plan Nos. H2949–002, H2949–009, and H2949–012, but does not include any Series 800 Medicare Advantage plans offered to retirees through commercial customers or contracts.

D. ''Clark and Nye County CMS Plans'' means the Clark County CMS Plans and the Nye County CMS Plans.

E. ''CMS'' means the Centers for Medicare and Medicaid Services, an agency within the U.S. Department of Health and Human Services.

F. ''Divestiture Assets'' means all tangible and intangible assets dedicated to the administration, operation, selling, and marketing of the Clark and Nye County CMS Plans, including (1) all of United's rights and obligations under United's Medicare Contract No. H2949 with CMS relating to the Clark and Nye County CMS Plans, including the right to offer the Medicare Advantage plan to individual enrollees pursuant to the bids and Evidence of Coverage filed with CMS in 2007 for the 2008 contract year, and the right to receive from CMS a per member per month capitation payment in exchange for providing or arranging for the benefits enumerated in the bids and Evidence of Coverage, and (2) copies of all business, financial and operational books, records, and data, both current and historical, that relate to the Clark County CMS Plans or the Nye County CMS Plans. Where books, records, or data relate to the Clark County CMS Plans or the Nye County CMS Plans, but not solely to these Plans, United shall provide excerpts relating to these Plans. Nothing herein requires United to take any action prohibited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

G. ''Evidence of Coverage'' means the document that outlines an enrollee's benefits and exclusions under a Medicare Advantage Plan.

H. ''HealthCare Partners'' means JSA Healthcare Nevada, LLC, a Nevada limited liability company, and its affiliated entities, including HealthCare Partners, LLC and Summit Medical Group.

I. ''Humana'' means Humana Inc., a Delaware corporation with its headquarters in Louisville, Kentucky.

J. ''Las Vegas Area'' means Clark County and Nye County.

K. ''Medicare Advantage Line of Business'' means the operations of United that implement and administer the Clark and Nye County CMS Plans.

L. ''Medicare Advantage Plan'' means Medicare Advantage health maintenance organization plans, Medicare Advantage preferred provider organization plans, and Medicare Advantage private fee-for-service plans, as defined by 42 U.S.C. 1395w–21(a)(2).

M. ''Nye County'' means Nye County, Nevada.

N. ''Nye County CMS Plans'' means the individual Medicare Advantage plans offered under CMS Plan Nos. H2949–007 and H2949–011, but does not include any Series 800 Medicare Advantage plans offered to retirees through commercial customers or contracts.

O. ''PIPA'' means The Physicians IPA, Inc., a Nevada non-profit corporation based in Las Vegas, Nevada.

P. ''Provider Network'' means all health care providers, including physicians, hospitals, ancillary service providers, and other health care providers with which United contracts for the provision of covered medical services for United's Medicare Advantage Plans in the Las Vegas area.

Q. ''Sierra'' means Defendant Sierra Health Services, Inc., a Nevada corporation with its headquarters in Las Vegas, Nevada, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their respective directors, officers, managers, agents, and employees.

R. ''Transaction'' means the merger contemplated by the Agreement and Plan of Merger dated as of March 11, 2007, by and among United, Sapphire Acquisition, Inc. and Sierra.

S. ''United'' means Defendant UnitedHealth Group Incorporated, a Minnesota corporation with its headquarters in Minnetonka, Minnesota, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their respective directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to United and Sierra, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestiture of the Divestiture Assets

A. Defendants are ordered, within forty-five (45) calendar days after the filing of the Complaint in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion and on terms acceptable to the United States in its sole discretion, including any agreement for transitional support services entered into pursuant to Section IV(J) of this Final Judgment. The United States, in its sole discretion, may grant one or more extensions of this time period, not to exceed sixty (60) calendar days in total, and shall notify the Court in each such circumstance. Defendants shall accomplish the divestiture of the Divestiture Assets as expeditiously as possible and in such a manner as will allow the Acquirer to be a viable, ongoing business engaged in the sale of Medicare Advantage Plans in the Las Vegas Area.

B. If applications for approval have been filed with CMS and the appropriate other governmental units within twenty (20) calendar days after the filing of the Complaint in this matter, but these required approvals have not been issued before the end of the period permitted for Divestiture in Section IV(A), the United States may extend the period for Divestiture until five (5) business days after all necessary government approvals have been received.

C. The Divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in the sale of Medicare Advantage Plans in the Las Vegas Area. Defendants must demonstrate to the sole satisfaction of the United States that the Divestiture will remedy the competitive harm alleged in the Complaint. The Divestiture shall be:

(1) Made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the sale of Medicare Advantage Plans in the Las Vegas Area; and

(2) Accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Defendants and the Acquirer gives Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere with the Acquirer's ability to compete effectively.

D. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

E. Defendants shall provide to the Acquirer, the United States, and any Monitoring Trustee, information relating to the personnel primarily involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment to those persons.

Defendants shall not interfere with any negotiations by the Acquirer to employ any of those persons. For a period of two (2) years from the filing of the Complaint in this matter, Defendants shall not hire or solicit to hire any such person who was hired by the Acquirer, unless the Acquirer has notified such person that the Acquirer does not intend to continue to employ the person.

F. Defendants shall assist the negotiation of and entry into agreement(s) between the Acquirer and HealthCare Partners that will allow members of the Clark and Nye County CMS Plans to have continued access to substantially all of United's Provider Network as of January 2008 on terms no less favorable than United's agreements as of January 2008.

G. Upon completing the Divestiture and through March 31, 2010, Defendants shall have no agreements with HealthCare Partners or PIPA that provide for access by United to HealthCare Partners or PIPA in connection with enrollees in any type of individual Medicare Advantage plan of Defendants in the Las Vegas Area.

H. Upon completing the Divestiture and through March 31, 2009, Defendants shall not use the AARP brand, or any other substantially similar brand, name, or logo, for any type of individual Medicare Advantage plan of Defendants in the Las Vegas Area. Upon completing the Divestiture and through March 31, 2010, Defendants shall not use the SecureHorizons brand, or any other substantially similar brand, name, or logo, for any type of individual Medicare Advantage plan of Defendants in the Las Vegas Area.

I. At the Acquirer's option, and subject to approval by the United States, Defendants will allow the Acquirer to license and use the SecureHorizons brand, and any other substantially similar brand, name, or logo, with the Divestiture Assets for twelve months upon completing the Divestiture.

J. At the Acquirer's option, and subject to approval by the United States, Defendants will provide transitional support services for medical claims processing, appeals and grievances, call-center support, enrollment and eligibility services, access to form templates, pharmacy services, disease management, Medicare risk-adjustment services, quality-assurance services, and such other transition services that are reasonably necessary for the Acquirer to operate the Divestiture Assets. Defendants shall not provide such transitional support services for more than twelve months from the date of the completion of the Divestiture unless the United States shall otherwise approve.

K. To ensure an effective transition and transfer of enrollees in the Clark and Nye County CMS Plans to the Acquirer, Defendants shall cooperate and work with the Acquirer in transition planning and implementing the transfer of the Divestiture Assets.

L. Defendants will communicate and cooperate fully with the Acquirer to promptly identify and obtain all consents of government agencies necessary to divest the Divestiture Assets.

M. Defendants will communicate and cooperate fully with the Acquirer to work in good faith with CMS to select a novation process that is efficient and minimizes any potential disruption and confusion to enrollees in the Clark and Nye County CMS Plans.

N. United shall warrant to the Acquirer that, since January 1, 2007, United has operated the Divestiture Assets in all material respects in the ordinary course of business consistent with past practices except for the global capitation agreement that United entered into with HealthCare Partners effective January 1, 2008. United shall also warrant that there has not been (a) any material loss or change with respect to the Divestiture Assets; (b) any event, circumstance, development, or change that has had a material adverse effect on the Divestiture Assets; or (c) any change by United of its accounting or actuarial methods, principles, or practices that is relevant to the Divestiture Assets.

O. Defendants shall comply with all laws applicable to the Divestiture Assets.

P. Defendants shall not take any action having the effect of delaying the authorization or scheduling of health care services provided to enrollees in the Clark and Nye County CMS Plans in a manner inconsistent with Defendants' past practice with respect to the Clark and Nye County CMS Plans.

Q. Defendants shall not make any material change to the customary terms and conditions upon which it does business with respect to the Medicare Advantage Line of Business that would be expected, individually or in the aggregate, to have a materially adverse effect on the Medicare Advantage Line of Business.

R. United shall identify its top ten independent insurance agents, general agents, producers, and brokers (collectively, ''Brokers'') that have entered into a Broker contract with respect to the Medicare Advantage Line of Business along with the corresponding number of enrollees produced by each such Broker. United will introduce the Acquirer to any such Broker for the purpose of the Acquirer having an opportunity, at the Acquirer's option, to negotiate an agreement with the Broker to market and sell the Clark and Nye County CMS Plans after the completion of the Divestiture.

S. Defendants shall first attempt to sell the Divestiture Assets to Humana.

T. If Defendants fail to divest the Divestiture Assets by May 15, 2008, at the discretion of the United States, United shall be required to submit all necessary filings to CMS to ensure that the Divestiture Assets remain a viable, ongoing business, offering the same Medicare Advantage Plans that United offered in 2008 with comparable benefits and premiums.

V. Appointment of Monitoring Trustee

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Hold Separate and Asset Preservation Stipulation and Order entered by this Court and shall have such powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of United any consultants, accountants, attorneys, or other persons, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment.

C. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

D. The Monitoring Trustee shall serve at the cost and expense of United, on such terms and conditions as the United States approves. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities.

E. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

F. Defendants shall assist the Monitoring Trustee in monitoring

Defendants' compliance with their individual obligations under this Final Judgment and under the Hold Separate and Asset Preservation Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

G. After its appointment, the Monitoring Trustee shall file monthly reports with the United States and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Hold Separate and Asset Preservation Stipulation and Order. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court.

H. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section VI of this Final Judgment and any agreement(s) for transitional support services described in Section IV(J) herein have expired.

VI. Appointment of Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section VI(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VII. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and any Monitoring Trustee of any proposed divestiture required by Section IV or VI of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any

third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section VI(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section VI shall not be consummated. Upon objection by Defendants under Section VI(C), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any Purchase made pursuant to Section IV or VI of this Final Judgment.

IX. Hold Separate and Preservation of Assets

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate and Asset Preservation Stipulation and Order entered by this Court. Defendants shall take no action that will jeopardize any divestiture ordered by this Court.

X. Affidavits and Records

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or VI, Defendants shall deliver to the United States and any Monitoring Trustee an affidavit as to the fact and manner of its compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming that the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States and any Monitoring Trustee an affidavit that describes in reasonable detail all actions that Defendants have taken and all steps that Defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States and any Monitoring Trustee an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) To access during Defendants' office hours to inspect and copy, or at the United States's option, to require that Defendants provide hard copy and electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding these matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports, or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, which includes CMS, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than grand jury proceedings).

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment provided, however, that this Final Judgment shall not prohibit Defendants from offering individual Medicare Advantage Plans in the ordinary course of business otherwise in conformity with this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon

and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Date

United States District Judge

U

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated March 11, 2007, whereby UnitedHealth Group, Inc. (''United'') agreed to acquire all outstanding shares of Sierra Health Services, Inc. (''Sierra''). The United States filed a civil antitrust Complaint on February 25, 2008 seeking to enjoin the proposed acquisition. The Complaint alleges that the proposed acquisition likely will substantially lessen competition in the sale of Medicare Advantage plans in Clark and Nye Counties, Nevada (''the Las Vegas area''), in violation of Section 7 of the Clayton Act (''Section 7''), 15 U.S.C. 18. As defined by federal law, Medicare Advantage plans consist of Medicare Advantage health maintenance organization (''MA–HMO'') plans, Medicare Advantage preferred provider organization (''MA–PPO'') plans, and Medicare Advantage Private Fee-for-Service (''MA–PFFS'') plans. See 42 U.S.C. 1395w–21(a)(2).

When the Complaint was filed, the United States also filed a Hold Separate and Asset Preservation Stipulation and Order (''Hold Separate Order'') and proposed Final Judgment. The proposed Final Judgment, which is explained more fully below, would permit United to complete its acquisition of Sierra but would require the divestiture of certain assets (the ''Divestiture Assets'') relating to United's Medicare Advantage line of business in the Las Vegas area and injunctive relief sufficient to preserve competition in the sale of Medicare Advantage plans in the Las Vegas area.

Until the divestiture of the Divestiture Assets has been accomplished, the Hold Separate Order requires Defendants to take all steps necessary to preserve the Divestiture Assets and ensure that Sierra operates as an independent, ongoing, economically viable, competitive business held entirely separate, distinct and apart from United's other operations. Further, until the divestiture of the Divestiture Assets, Defendants must take all steps necessary to ensure that United's Medicare Advantage line of business in Las Vegas will be maintained and operated as an ongoing, economically viable and active line of business; that competition between United and Sierra in the sale of Medicare Advantage plans in the Las Vegas area is maintained during the pendency of the ordered divestitures; and that Defendants preserve and maintain the Divestiture Assets associated with United's Medicare Advantage line of business in the Las Vegas area. The Hold Separate Order thus ensures that competition is protected pending completion of the required divestitures and that the assets are preserved so that relief will be effective.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations

A. The Defendants and the Proposed Transaction

United is a Minnesota corporation and has its principal place of business in Minnetonka, Minnesota. United is the largest health insurer in the United States, providing health insurance and other services to more than 70 million people nationwide. In 2007, United reported revenues of approximately $75 billion. United provides health insurance to approximately 27,800 Medicare Advantage enrollees in the Las Vegas area under the Secure Horizons and AARP brands.

United has a well-established managed-care network in the Las Vegas area that it uses to provide services to enrollees in Medicare Advantage plans. Health care services provided by HealthCare Partners, LLC (''HealthCare Partners''), The Physicians IPA, Inc., and Summit Medical Group are an integral part of this network.

Sierra is a Nevada corporation with its principal place of business in Las Vegas, Nevada. Sierra is the largest health insurer in Nevada, providing health insurance and other services to more than 655,000 people. In 2007, Sierra reported revenues of $1.9 billion. Sierra provides health insurance to approximately 49,500 Medicare Advantage enrollees in the Las Vegas area. It sells Medicare Advantage HMO products under the Senior Dimensions brand. Sierra sells Medicare Advantage preferred provider organization (''PPO'') plans under the Sierra Spectrum and Sierra Nevada Spectrum brands. Sierra also sells MA–PFFS plans under the Sierra Optima Select brand.

Sierra owns the largest medical group in Las Vegas, Southwest Medical Associates, Inc. (''SMA''), which employs approximately 250 physicians and other health care professionals. Sierra uses SMA to provide a substantial portion of the care delivered to Sierra's Medicare Advantage members, particularly HMO and PPO members.

On March 11, 2007, United and Sierra entered into an Agreement and Plan of Merger whereby United agreed to acquire all outstanding shares of Sierra. The transaction is valued at approximately $2.6 billion. The transaction would give United a 94 percent share of Medicare Advantage enrollees in the Las Vegas area.

B. The Relevant Product Market is No Broader Than the Sale of Medicare Advantage Health Insurance in the Las Vegas Area

The Complaint alleges that United's proposed acquisition of Sierra is likely to substantially lessen competition in a market no broader than the sale of Medicare Advantage health insurance plans to senior citizens (''seniors'') and other Medicare-eligible individuals in the Las Vegas area, in violation of Section 7 of the Clayton Act. Due in large part to the lower out-of-pocket costs and richer benefits that many Medicare Advantage plans offer seniors over traditional Medicare, seniors in the Las Vegas area would not likely switch away from Medicare Advantage plans to traditional Medicare in sufficient numbers to make an anticompetitive price increase or reduction in quality unprofitable.

In a product market that consists of all Medicare Advantage plans, the parties have a combined market share of approximately 94 percent. In a product market of Medicare Advantage coordinated-care plans (MA–HMO and MA–PPO plans), the parties have a

combined market share of approximately 99 percent.[1]

1. Healthcare Options for Seniors

The federal government facilitates the provision of health insurance to millions of Medicare-eligible citizens through two types of programs: (1) government-provided traditional Medicare (also known as Original Medicare) and (2) privately-provided Medicare Advantage.

Under traditional Medicare, a beneficiary receives hospital coverage under Medicare Part A and can elect to receive coverage for physician and out-patient services under Part B. For Part A, the government charges no monthly premium if the beneficiary was in the workforce and paid Medicare taxes. For Part B, the government deducts a monthly premium (currently $96.40 for most beneficiaries) from beneficiaries' Social Security checks. In addition, beneficiaries must pay deductibles and/or co-insurance for doctor visits and hospital stays. If beneficiaries want to limit potentially catastrophic out-of-pocket costs, they need to purchase a separate Medicare Supplement plan. For prescription drug coverage, seniors enrolled in traditional Medicare must purchase Medicare Part D drug coverage for an additional premium.

Medicare Advantage plans are offered by private insurance companies. In establishing the Medicare Advantage program, Congress intended that vigorous competition among private insurers would lead insurers to offer seniors richer and more affordable benefits, provide a wider array of health-insurance choices, and be responsive to the demands of seniors. In fact, most successful Medicare Advantage plans, including those in the Las Vegas area, offer substantially richer benefits at lower costs to enrollees than traditional Medicare.

2. CMS Regulation of Medicare Advantage Plans

An insurance company that seeks to offer a Medicare Advantage plan in a region must submit a bid to the Centers for Medicare and Medicaid Services (''CMS'') for each Medicare Advantage plan that it intends to offer. The bid must provide the insurer's anticipated costs per member to cover the basic Medicare Part A and Part B benefits. Those costs, including an anticipated profit margin, are compared to a Medicare benchmark that reflects, in part, the government's likely cost of covering the beneficiaries. If the insurer's bid for Medicare benefits is lower than the benchmark, the Medicare program retains 25 percent of the savings and the insurer must use the other 75 percent to provide supplemental benefits or lower premiums to enrollees. Accordingly, the lower the insurer's projected costs, the more benefits seniors enrolled in the insurer's plan will have available to them.

CMS's role in approving bids for Medicare Advantage plans does not displace or reduce competition among participating health insurance companies. Rather, the structure of the Medicare Advantage program encourages insurers to compete against each other to attract Medicare beneficiaries by providing low prices and more benefits.

3. Medicare Advantage Plans Provide Better Benefits Than Traditional Medicare

As stated above, many Medicare Advantage plans, including the United and Sierra plans offered in the Las Vegas area, provide substantially richer benefits at lower costs to enrollees than traditional Medicare. They offer lower co-payments, lower co-insurance, caps on total yearly out-of-pocket costs, prescription drug coverage, vision coverage, health club memberships, and other benefits that traditional Medicare does not cover.

A sufficient number of seniors in the Las Vegas area would not switch away from Medicare Advantage plans to traditional Medicare in the event of a small but significant reduction in benefits under the plans, or a small but significant increase in price, to render the benefit decrease or price increase unprofitable. Accordingly, the sale of Medicare Advantage plans is a relevant product market and a line of commerce in the Las Vegas area under Section 7 of the Clayton Act.

C. The Las Vegas Area Is a Relevant Geographic Market

Medicare-eligible residents in the Las Vegas area (Clark and Nye Counties) may only enroll in Medicare Advantage plans that CMS approves for the county in which they live. Consequently, they could not turn to Medicare Advantage plans elsewhere in the United States. Because Medicare-eligible residents in the Las Vegas area cannot purchase substitute Medicare Advantage plans sold in other geographic areas, the Las Vegas area is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

D. Anticompetitive Effects of the Proposed Transaction

The relevant market is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. Sierra accounts for approximately 60 percent of Medicare Advantage enrollees in the Las Vegas area. United accounts for approximately 34 percent. If consummated without divestiture relief, the merger would give the merged company a 94 percent market share.

The acquisition of Sierra by United would eliminate substantial head-to-head competition between United and Sierra that for years has benefited thousands of seniors. United and Sierra have competed with each other to sell Medicare Advantage plans that provide seniors with substantially greater benefits than those available under traditional Medicare, saving seniors thousands of dollars in yearly health care costs. The proposed acquisition would end that competition, eliminating the pressure that these close competitors place on each other to maintain attractive benefits, lower prices, and high-quality health care.

United and Sierra have competed against each other for newly Medicare-eligible individuals, sought to attract members from each other, and worked to avoid losing members to each other, by offering plans with zero premiums, reducing co-payments, eliminating deductibles, improving drug coverage, offering desirable fitness benefits, and attempting to make their provider networks more attractive to potential members. They have monitored each other's benefits to stay competitive and have considered each other important competitors. After the acquisition, the combined United/Sierra would not have the same incentive to improve benefits of Medicare Advantage plans as the two separate companies do today, and likely would raise prices or reduce services.

Competition from existing competitors with small market shares that offer Medicare Advantage plans or new entrants would be unlikely to prevent anticompetitive effects. Such firms face substantial cost, reputation, and distribution disadvantages that would likely prevent them from expanding membership sufficiently to prevent United from raising prices or reducing services.

[1] There may be a narrower product market that consists of Medicare Advantage coordinated-care plans, but the Division did not need to determine whether such a product market exists to conclude that the merger is likely to substantially lessen competition and to identify an appropriate remedy for the reduction in competition that otherwise would have resulted from the merger.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Assets

The proposed Final Judgment is designed to eliminate the anticompetitive effects identified in the Complaint by requiring United to divest its individual Medicare Advantage line of business in the Las Vegas area to an acquirer approved by the United States and on terms acceptable to the United States. This line of business covers approximately 25,800 individual Medicare Advantage beneficiaries. As described in Section IV of the proposed Final Judgment, United is required to divest all tangible and intangible assets dedicated to the administration, operation, selling, and marketing of its Medicare Advantage plans to individuals in the Las Vegas area (''the Divestiture Assets''), including all of United's rights and obligations under the relevant United contracts with CMS. The divestiture, as contemplated in the proposed Final Judgment, is designed to allow the acquirer of the assets to offer uninterrupted care to subscribers of United's divested Medicare Advantage plans, including the ability of subscribers to continue to see the same health care professionals available to them under the United Medicare Advantage plans.

The Divestiture Assets do not include assets relating to approximately 1,800 group enrollees who enrolled in a Medicare Advantage plan through an employer or other group. The United States concluded that divesting these assets was not necessary to eliminate the transaction's anticompetitive effects and could be disruptive to those beneficiaries.

The divestiture eliminates the anticompetitive effects of the merger by requiring United to divest all of its individual Medicare Advantage business in the Las Vegas area to an acquirer that can compete vigorously with the merged United-Sierra. The divestiture must be accomplished by selling or conveying the Divestiture Assets to an acquirer that, in the sole discretion of the United States, will be a viable, ongoing competitor in the Las Vegas area Medicare Advantage market. The divestiture shall be (i) made to an acquirer that has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the sale of Medicare Advantage products, and (ii) accomplished so as to satisfy the United States that none of the terms of any agreement between United and any acquirer gives United the ability to interfere with the acquirer's ability to compete effectively.

B. Selected Provisions of the Proposed Final Judgment

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. A quick divestiture has the benefits of restoring competition lost in the acquisition and reducing the possibility of dissipation of the value of the assets. Section IV(A) of the proposed Final Judgment requires Defendants to divest the Divestiture Assets as a viable, ongoing business within 45 days after the filing of the Complaint. [2]

United has proposed to sell the Divestiture Assets to Humana Inc., and the United States has tentatively approved of Humana as the acquirer. Consequently, Section IV(S) of the proposed Final Judgment requires United first to attempt to sell the Divestiture Assets to Humana.

Other provisions of the proposed Final Judgment require Defendants to take several steps to enable the acquirer to provide prompt and effective competition in the Medicare Advantage market. Section IV(F) requires that Defendants assist the acquirer of the Divestiture Assets to enter into an agreement with HealthCare Partners that will allow members of United's Medicare Advantage plans to have continued access to substantially all of United's provider network of physicians, hospitals, ancillary service providers, and other health care providers on terms no less favorable than United's agreement with HealthCare Partners. Section IV(J) also requires that, at the acquirer's option, and subject to approval by the United States, Defendants provide transitional support services for medical claims processing, appeals and grievances, call-center support, enrollment and eligibility services, access to form templates, pharmacy services, disease management, Medicare risk-adjustment services, quality-assurance services, and such other transition services that are reasonably necessary for the acquirer to operate the Divestiture Assets.

Defendants will not provide these transitional support services for more than twelve months without approval from the United States. Likewise, if Defendants fail to divest the Divestiture Assets by May 15, 2008, Section IV(T) requires United, at the discretion of the United States, to submit all necessary filings to CMS to ensure that the acquirer of the Divestiture Assets (or United, prior to sale of the assets) would be able to continue to offer Medicare Advantage plans in the Las Vegas area.

From the date that United sells the Divestiture Assets until March 31, 2010, Section IV(G) of the proposed Final Judgment prohibits United from entering into agreements with HealthCare Partners, Physicians IPA, Inc., or Summit Medical Group for any type of individual Medicare Advantage plan of Defendants in the Las Vegas area. Currently, these health care providers participate in United's Medicare Advantage network, but do not participate in Sierra's. The purpose of this requirement is to insure that the acquirer of the Divestiture Assets is placed in the same competitive position with respect to the merged company as United has today with respect to Sierra.

In addition, Section IV(H) prohibits United from using the AARP brand for any of its individual Medicare Advantage plans in the Las Vegas area from the date that United sells the Divestiture Assets until March 31, 2009, and from using the SecureHorizons brands for any individual Medicare Advantage plans in the Las Vegas area from the date that United sells the Divestiture Assets until March 31, 2010. This prohibition will give the acquirer of the Divestiture Assets time to establish its own brand and reduce beneficiary confusion as to which company operates the plan in which the beneficiary is enrolled.

Section V of the proposed Final Judgment permits the appointment of a Monitoring Trustee by the United States in its sole discretion, subject to the Court's approval. If appointed, the Monitoring Trustee will have the power and authority to monitor Defendants' compliance with the terms of the Final Judgment and the Hold Separate Order. The Monitoring Trustee will have access to all personnel, books, records, and information necessary to monitor such compliance, and will serve at the cost and expense of United. The Monitoring Trustee will file monthly reports with the United States and the Court setting forth Defendants' efforts to comply with their obligations under the proposed Final Judgment and the Stipulation.

Section VI of the proposed Final Judgment provides that in the event the Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, the Court will appoint a trustee selected by the United States to effect the

[2] Section IV(A) of the proposed Final Judgment provides that the United States, in its sole discretion, may grant one or more extensions to the 45-day period, not to exceed sixty calender days in total. The United States will notify the Court if such an extension is granted.

divestitures. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages that the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement; whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against United's acquisition of Sierra. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve competition in the product and geographic markets identified in the Complaint. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally *United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[3]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but

[3] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also *SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' SBC Commc'ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' SBC Commc'ns, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 1459–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp. 2d at 11.[5]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 25, 2008.

Respectfully Submitted,
Peter J. Mucchetti (DC Bar # 463202)
Mitchell H. Glende
N. Christopher Hardee (DC Bar # 458168)
Tiffany C. Joseph-Daniels
Barry J. Joyce
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[FR Doc. E8–4393 Filed 3–7–08; 8:45 am]
BILLING CODE 4410–11–M

[4] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[5] See *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before April 9, 2008.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic mail: Standards-Petitions@dol.gov.*
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director,

Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Jack Powasnik, Deputy Director, Office of Standards, Regulations, and Variances at 202–693–9443 (Voice), *powasnik.jack@dol.gov* (E-mail), or 202–693–9441 (Telefax), or contact Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M–2008–002–C.

Petitioner: Blue Diamond Coal Company, P.O. Box 47, Slemp, Kentucky 41763.

Mine: Mine #75, MSHA I.D. No. 15–17478, located in Perry County, Kentucky.

Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

Modification Request: The petitioner requests a modification of the existing standard to permit check points (examination points) to be established in twelve locations of the Parallel Owens Branch Return Main due to water accumulations in these areas that prevent foot travel. The petitioner proposes to establish examination points at certain points to evaluate airflow entering the Parallel Owens Branch Return Main and exiting Parallel Owens Branch Return Main. The petitioner also proposes to establish ventilation check points between certain breaks of the Parallel Owens Branch Return Main. The petitioner states that due to poor roof conditions and water accumulations and the distance from active works, it is impractical to expose personnel to traveling the affected area. The petitioner further states that no lesser degree of safety is ensured by traveling to both ends of the mains and verifying adequate air volume and quality at the evaluation points and check points. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2008–003–C.

Petitioner: Brooks Run Mining Company, LLC, 208 Business Street, Beckley, West Virginia 25801.

Mine: Wyoming No. 1 Mine, MSHA I.D. No. 46–09213 located in Wyoming County, West Virginia; and War Branch No. 1 Mine, MSHA I.D. No. 46–09055 and Cucumber Slope Mine, MSHA I.D. No. 46–09066 located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to allow the deluge-type water spray to function without blow-off dust covers on the system nozzles. The petitioner proposes to conduct weekly inspection and functional testing of its complete deluge-type water spray system and remove blow-off dust cover from the nozzles. The petitioner asserts that application of the existing standard will at all times guarantee no less than the same measure of protection afforded the miners employed by the existing standard.

Docket Number: M–2008–004–C.

Petitioner: The American Coal Company, P.O. Box 727, Harrisburg, Illinois 62946.

Mine: Galatia Mine, MSHA I.D. No. 11–02752, located in Saline County, Illinois.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i), (ii) (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to increase the maximum length of cables supplying power to permissible equipment used in continuous mining sections. The petitioner states that: (1) This petition will only apply to trailing cables supplying three-phase, 995-volt power to continuous mining machines and trailing cables supplying three-phase, 480-volt power to roof bolters; (2) the maximum length of the 995-volt continuous mining machine trailing cables will be 950 feet and the maximum length of the 480-volt trailing cables for roof bolters will be 900 feet; (3) 995-volt continuous mining machine trailing cables will not be smaller than 2/0 and the 480-volt trailing cables for roof bolters will not be smaller than #2 American Wire Gauge (AWG); (4) all circuit breakers used to protect 2/0 trailing cables exceeding 850 feet in length will have instantaneous trip units calibrated to trip at 1,500 amperes and the trip setting will be sealed or locked and will have permanent legible permanent labels that will be maintained as legible to identify the circuit breaker as being suitable for protecting 2/0 cables; (5) replacement instantaneous trip units, used to protect 2/0 trailing cables, will be calibrated to trip at 1,500 amperes and the setting will be sealed or locked; (6) all circuit breakers used to protect #2 AWG trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 700 amperes, the trip setting will be sealed or locked, and the circuit breakers will have permanent legible labels that will be maintained as legible to identify the circuit breakers as being suitable for protecting #2 AWG cables; (7) replacement instantaneous trip units used to protect #2 AWG trailing cables will be calibrated to trip at 700 amperes and the setting will be sealed or locked; (8) the designated operator will visually examine the trailing cables during each production day to ensure that the cables are operating safely and the instantaneous settings of the calibrated breakers do not have seals or locks removed and do not exceed the stipulated settings; and (9) any trailing cable that is not in safe operating condition will be removed from service immediately and repaired or replaced; (10) each splice or repair in the trailing cables will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials and will comply with 30 CFR 75.603 and 75.604; (11) permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed or locked short-circuit protection device to warn the miners not to change or alter the short-circuit settings. Persons may review a complete description of petitioner's alternative

method and procedures at the MSHA address listed in the notice. The petitioner states that the alternative method will not be implemented until miners designated to examine the integrity of the seals or locks verify the short-circuit settings, and proper procedures training have been provided for examining trailing cables for defects and damage. The training for the miners will include the following elements: (1) Training in mining methods and operating procedures for protecting the trailing cables against damage; (2) training in the proper procedures for examining the trailing cables to ensure safe operating conditions; (3) training in the hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables; and (4) training on how to verify that interrupting device(s) protecting the trailing cable(s) are properly set and maintained. The petitioner further state that within 60 days after the petition is granted, revisions to the Part 48 training plan will be submitted to the District Manager for the area in which the mine is located. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to the miners as would be provided by the existing standard.

Docket Number: M–2008–005–C.

Petitioner: Bear Gap Coal Company, 74 Kushwa Road, Spring Glen, Pennsylvania 17978.

Mine: N & L Slope Mine, MSHA I.D. No. 36–02203, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.311(a) (Main mine fan operation).

Modification Request: The petitioner requests a modification of the existing standard to allow the main mine fan to be idle during non-working hours. The petitioner states that historically, the main mine fan operation has been shut down during non-working shifts, because of icing during the winter months. The petitioner proposes to use the following stipulations in the fan stoppage plan: (1) Shut the main mine fan down during idle periods; (2) no mechanized equipment will be used underground when the fan is idle; (3) no electric power circuits will be energized when the fan is idle; (4) the main mine fan will be operated for a minimum of one-half hour after the pressure recorder indicates that the normal mine ventilating pressure has been reached prior to any one entering the mine; (5) the slope gunboat may be used to make the required per-shift examination; (6) the communication circuit 9-volts will be energized prior to the pre-shift being made; (7) a certified person will conduct an examination of the entire mine according to the requirements in 30 CFR 75.360; (8) persons will be allowed to enter the mine after it is determined to be safe and the pre-shift examination results have been recorded. The petitioner further states that repeated testing of methane concentrations have shown that concentration levels at no time have risen above 0.0 percent. The petitioner asserts that the proposed alternative method will in no way would provide less than the same measure of protection afforded the miners under the existing standard.

Dated: March 4, 2008.

Jack Powasnik,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E8–4758 Filed 3–7–08; 8:45 am]

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NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; 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: Advisory Committee for Environmental Research and Education (9487).

Dates: April 9, 2008, 9 a.m.–5 p.m.; April 10, 2008, 9 a.m.–1 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Alan Tessier, National Science Foundation, Suite 635, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–7198.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda:

April 9
- Introduction of New Members.
- Update on recent NSF environmental activities.
- Discussion of Sustainability Science.
- Break Out Groups.

April 10
- Meeting with the Director (or Representative).
- Discussion of Future AC/ERE activities.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–4618 Filed 3–7–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection:

NUREG/BR–0238, Materials Annual Fee Billing Handbook.
NRC Form 628, ''Financial EDI Authorization.''
NUREG/BR–0254, Payment Methods.
NRC Form 629, ''Authorization for Payment by Credit Card.''

3. The form numbers if applicable: NRC Form 628 and NRC Form 629.

4. How often the collection is required: Annually.

5. Who will be required or asked to report: Anyone conducting business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.

6. An estimate of the number of annual responses: 466 (10 for NRC Form 628 and 456 for NRC Form 629 and NUREG/BR–0254).

7. The estimated number of annual respondents: 466 (10 for NRC Form 628 and 456 for NRC Form 629 and NUREG/BR–0254).

8. An estimate of the total number of hours needed annually to complete the requirement or request: 38 (.8 hour for NRC Form 628 and 37 hours for NRC Form 629 and NUREG/BR–0254).

9. An indication of whether section 3507(d), Public Law 104–13 applies: N/A.

10. *Abstract:* The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit

cards. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC. The NRC Form 628, ''Financial EDI Authorization,'' provides an option to make electronic payment through the Automated Clearinghouse (ACH) Network and authorizes the licensee's bank to pay invoices to the NRC through the ACH. The NRC Form 628 requests the licensee's name; electronic funds transfer contact, telephone number, address, authorized signature and title.

NRC Form 629, ''Authorization for Payment by Credit Card,'' is another option used to authorize payment. The credit card authorization form is used by licensees to authorize payment by credit card for license fees and for payment of fees for fingerprint cards, and solicits information that identifies the cardholder's name, address, account number, card expiration date, cards accepted, cardholder's signature, invoice number or license number.

There are no recordkeeping requirements associated with this collection.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 9, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan Frey, Desk Officer, Office of Information and Regulatory Affairs (3150–0190), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 3rd day of March, 2008.

For the Nuclear Regulatory Commission.

Tremaine U. Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–4646 Filed 3–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 030–19882; License No: 52–21175–01; EA–07–132]

In the Matter of Baxter Healthcare, Aibonito, Puerto Rico; Confirmatory Order Modifying License (Effective Immediately)

I

Baxter Healthcare of Puerto Rico (Baxter) is the holder of NRC Material License No. 52–21175–01 pursuant to 10 CFR part 30 on July 11, 2005, which authorizes the Licensee to operate an irradiator at its facility in Aibonito, Puerto Rico.

This Confirmatory Order (Order) is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on December 6, 2007.

II

An investigation was initiated by the NRC Office of Investigations (OI) on June 1, 2006, at the Baxter facility in Aibonito, Puerto Rico. This investigation was initiated, in part, to determine if Baxter employees willfully violated NRC requirements related to inspection and maintenance activities for the licensed irradiator at the site, as well as personnel training and qualifications for two irradiator operators. As noted in an NRC letter to Baxter on September 17, 2007, OI substantiated, based on the evidence developed during its investigation and a related NRC inspection, that certain Baxter employees, including a first-level supervisor (superintendent), deliberately violated NRC requirements as evidenced by the following: (1) Certain maintenance checks/inspections of the irradiator were not conducted at the Baxter facility, during the period of December 1, 2003 to April 24, 2006, contrary to 10 CFR 36.61(a); (2) the records associated with these maintenance checks/inspections were inaccurate contrary to 10 CFR 30.9; (3) the annual performance (training) tests for two individuals were not performed as required in 2005, contrary to 10 CFR 36.51(d); and, (4) the records associated with these two annual performance tests were inaccurate, contrary to 10 CFR 30.9. The September 17, 2007 letter offered Baxter the opportunity to either attend a Predecisional Enforcement Conference or to request use of ADR, to resolve this matter. In response to the September 17, 2007 letter, Baxter requested the use of ADR to resolve this matter with the NRC.

On December 6, 2007, the NRC and Baxter met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the enforcement action. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During that ADR session, a settlement agreement was reached. The elements of the settlement agreement consisted of the following:

A. The NRC and Baxter Healthcare of Puerto Rico (Baxter) agree that certain Baxter employees, including a first-level supervisor (superintendent), deliberately violated NRC requirements as evidenced by the following: (1) Certain maintenance checks/inspections of the irradiator were not conducted at the Baxter facility, during the period December 1, 2003 to April 24, 2006, contrary to 10 CFR 36.61(a); and, (2) the records associated with these maintenance checks/inspections were inaccurate contrary to 10 CFR 30.9;

B. The NRC maintains that additional deliberate violations of NRC requirements occurred in that (1) annual performance (training) tests for two individuals were not performed as required in 2005, contrary to 10 CFR 36.51(d); and, (2) the records associated with these two annual performance tests were inaccurate, contrary to 10 CFR 30.9. Baxter maintains that based on their investigation of these issues that the evidence available to Baxter did not show that these violations occurred. The NRC and Baxter agree to disagree relative to these violations of 10 CFR 36.51(d) and associated record requirements;

C. Baxter took multiple corrective actions to address the violations, as documented in Baxter's letters dated November 30, 2007, February 2, 2007, November 20, 2006, and November 3, 2006, including: (1) Revising appropriate procedures to require a second person for implementation of the maintenance checks/inspections, as well as a second signature to verify completion; (2) revising procedure records to include attaching the

computer printout from the console's Programmable Logic Computer to confirm that certain event checks were conducted; (3) training all irradiator operators on good documentation practices; (4) completing annual performance tests and written tests for all irradiator operators in November 2006; (5) conducting two independent reviews of the irradiator's operation; (6) interviewing all irradiator operators to determine whether similar issues have occurred of which Baxter is not aware; (7) training all irradiator operators on the methods to report inappropriate behavior; (8) in consultation with the irradiator manufacturer, reviewing monthly and weekly maintenance inspection tests to affirm the need and frequency of the tests, and to explore methods to make the tests less cumbersome; (9) taking appropriate disciplinary action against the responsible individuals, commensurate with their actions; (10) Plant General Manager attending monthly management meetings that discuss identified concerns; (11) implementing the ''Dupont STOP'' peer observation and feedback process to focus on behavior change to improve safety; and, (12) implementing the ''Toyota 5S'' process, adding a 6th S for Safety to improve facility performance and safety;

D. During the ADR mediation session, Baxter recognized an opportunity for additional corrective actions to address the work environment concerns that were described in the NRC letter dated September 17, 2007. Therefore, Baxter agreed to take the following actions to sensitize the gamma sterilization department managers, supervisors, and employees to the importance of fostering and maintaining a safety culture which encourages all department employees to identify safety concerns and inappropriate behavior. These actions will consist of:

1. Using an independent outside organization to conduct a safety culture assessment of the gamma sterilization department and include any identified recommendations in the Baxter corrective action program. This will be completed by June 30, 2008. The results will be communicated, as appropriate, to department employees and will be made available for NRC review during inspections;

2. Conducting in-person training of the gamma sterilization department employees concerning raising safety issues without fear of retaliation, stressing the importance of radiological safety. This will be completed by June 30, 2008. Baxter will provide a lesson plan for this training activity to the NRC at least 30 days prior to conducting the training;

3. Issuing a lessons-learned letter from the Plant General Manager to the gamma sterilization department employees regarding the violations described herein, and the underlying causes. This will be completed by March 31, 2008; and,

4. Evaluating annual irradiator operator performance tests to ensure that they are consistent with Baxter's commitment to foster a safety conscious work environment;

E. Baxter agreed to send a letter to the NRC, within 30 days of completion of all of the actions specified in Items C and D, informing the NRC that these actions are complete;

F. In light of the actions Baxter took as described in Item C, and those actions Baxter has committed to take as described in Items D and E, as well as Baxter's agreement to pay a $15,000 civil penalty, the NRC agreed to characterize the violations as one Severity Level III problem with three examples, rather than issuance of separate civil penalties for each of the violations. The NRC will issue a letter with the aforementioned Notice of Violation, Civil Penalty, and a Confirmatory Order to Baxter confirming the commitments set forth herein. The letter, the Notice of Violation, Civil Penalty and the Confirmatory Order will be publicly available in ADAMS, and will appear on the NRC ''Significant Enforcement Actions'' Web site; and

G. Baxter agreed to the issuance of the letter, the Notice of Violation, Civil Penalty, and the Confirmatory Order confirming this agreement, and also agrees to waive any request for a hearing regarding the aforementioned Confirmatory Order.

On February 15, 2008, the Licensee, Baxter, consented to issuing this Order with the commitments, as described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Baxter has agreed to take additional actions to address NRC concerns, as set forth in Section III, the NRC has concluded that its concerns can be resolved through the NRC's confirmation of the commitments as outlined in this Order.

I find that Baxter's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Baxter's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30 and 35, it is hereby ordered, effective immediately that License No. 52–21175–01 is modified as follows:

A. Baxter will pay a civil penalty in the amount of $15,000 for the violation described in the accompanying NOV. The method of payment is described in the letter transmitting this Order, as well as in NUREG/BR–0254;

B. Baxter will use an independent outside organization to conduct a safety culture assessment of the gamma sterilization department and include any identified recommendations in the Baxter corrective action program. This will be completed by June 30, 2008. The results will be communicated, as appropriate, to department employees and will be made available for NRC review during inspections;

C. Baxter will conduct in-person training of the gamma sterilization department employees concerning raising safety issues without fear of retaliation, stressing the importance of radiological safety. This will be completed by June 30, 2008. Baxter will provide a lesson plan for this training activity to the NRC at least 30 days prior to conducting the training;

D. Baxter will issue a lessons-learned letter from the Plant General Manager to the gamma sterilization department employees regarding the violations described herein, and the underlying causes. This will be completed by March 31, 2008:

E. Baxter will evaluate annual irradiator operator performance tests to ensure that they are consistent with Baxter's commitment to foster a safety conscious work environment;

F. Baxter will send a letter to the NRC, within 30 days of completion of all of the actions specified in Sections V.A–E of this order, informing the NRC that these actions are complete; and

G. Baxter will implement the procedures, training, and other actions identified in Section III.C of this Order.

The NRC Region I Regional Administrator may relax or rescind, in writing, any of the above conditions upon demonstration by Baxter of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Baxter, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

In the absence of any request for a hearing, or written approval of an extension of time in which to request a hearing, this Order shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

An answer or a request for a hearing shall not stay the effective date of this order.

Dated this the 26th day of February 2008.

For the Nuclear Regulatory Commission.

Marc L. Dapas,

Deputy Regional Administrator.

[FR Doc. E8–4716 Filed 3–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Section 50.46 of Title 10 of the *Code of Federal Regulations* (10 CFR), and 10 CFR Part 50, Appendix K, for Facility Operating License No. NPF–6, issued to Entergy Operations, Inc. (Entergy, the licensee), for operation of the Arkansas Nuclear One, Unit 2 (ANO–2), located in Pope County, Arkansas. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the ANO–2 to use Optimized ZIRLO™, an advanced alloy fuel cladding material for pressurized-water reactors.

The proposed action is in accordance with the licensee's application dated April 24, 2007 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML071220267).

The Need for the Proposed Action

The proposed action is needed so that Entergy can use Optimized ZIRLO™, an advanced alloy for fuel rod cladding and other assembly structural components at the ANO–2.

Section 50.46 of 10 CFR and 10 CFR Part 50, Appendix K, make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO. Since the chemical composition of the Optimized ZIRLO™ alloy differs from the specifications for zircaloy or ZIRLO, a plant-specific exemption is required to allow the use of the Optimized ZIRLO™ alloy as a cladding material or in other assembly structural components at the ANO–2.

Environmental Impacts of the Proposed Action

The underlying purposes of 10 CFR 50.46 and 10 CFR Part 50, Appendix K, are to ensure that facilities have adequate acceptance criteria for the emergency core cooling system (ECCS), and to ensure that cladding oxidation and hydrogen generation are appropriately limited during a loss-of-coolant accident (LOCA) and conservatively accounted for in the ECCS evaluation model, respectively. Neither 10 CFR 50.46 nor 10 CFR Part 50, Appendix K, explicitly allows the use of Optimized ZIRLO™ as a fuel rod cladding material or for other assembly structural components. Topical Report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™,'' which was approved by the NRC in July 2006 (ADAMS Accession No. ML062080569), demonstrated that the effectiveness of the ECCS will not be affected by a change from zircaloy to Optimized ZIRLO™. In addition, as a condition for the approval of WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A, additional data was provided by Westinghouse by letters dated January 4, and November 6, 2007, and February 5, 2008, that demonstrated that the Baker-Just equation (used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation) is conservative in all post-LOCA scenarios with respect to Optimized ZIRLO™ advanced alloy as a fuel rod cladding material or in other assembly structural components. The licensee currently uses and will continue to use NRC-approved methods for the reload design process for ANO–2 reloads with Optimized ZIRLO™.

If the exemption is issued details of the staff's safety evaluation will be provided in the exemption.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the ANO–2 dated June 16, 1977.

Agencies and Persons Consulted

In accordance with its stated policy, on January 27, 2008, the staff consulted with the Arkansas State official, Mr. Bernard Beville of the Department of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 24, 2007. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 3rd day of March, 2008.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–4691 Filed 3–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–021]

Mitsubishi Heavy Industries, Ltd.; Acceptance for Docketing of an Application for Standard Design Certification of the US–APWR

On December 31, 2007, the U.S. Nuclear Regulatory Commission (NRC, the Commission) received a design certification application from Mitsubishi Heavy Industries (MHI), Ltd., dated December 31, 2007, filed pursuant to Section 103 of the Atomic Energy Act and Subpart B, ''Standard Design Certification,'' of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, *al Regulations* (10 CFR) Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' A notice of receipt and availability of this application was previously published in the **Federal Register** (73 FR 3495) on January 18, 2008.

The NRC staff has determined that MHI has submitted information in accordance with 10 CFR Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR Part 52 that is acceptable for docketing. The docket number established for this application is 52–021.

The NRC staff will perform a detailed technical review of the design certification application. Docketing of the design certification application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. A notice relating to the rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be published in the future.

The US–APWR design is an approximately 1,700 megawatts electric, four loop, advanced pressurized water reactor (APWR). MHI developed the US–APWR based on technologies for a 1,538 megawatts electric APWR planned for use in Japan. The US–APWR is based on the latest technologies to improve plant efficiency, reduce plant building volume, and provide a 24-month fuel cycle. The US–APWR application includes the entire power generation complex, except those elements and features considered site-specific.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application is also available at *http://www.nrc.gov/reactors/new-licensing/design-cert.html.*

Dated at Rockville, Maryland, this 29th day of February 2008.

For the Nuclear Regulatory Commission.

Jeffrey A. Ciocco,

Sr. Project Manager, US–APWR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–4718 Filed 3–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 110–05711 (Import); 110–05710 (Export)]

Requests for Licenses To Import and Export Radioactive Waste; Extension of Time for Comment and Intervention

On February 11, 2008, the Commission issued notices on a Request for a License to Import Radioactive Waste and a Request for a License to Export Radioactive Waste. 73 FR 7764–7766. The import/export applications were filed by EnergySolutions, Inc. The notices stated that any written comments and requests for hearing or intervention on the import/export applications should be submitted within 30 days after publication of the notices in the **Federal Register**.

In response to a number of requests for an extension of this time period, the Commission is issuing a Notice Extending the Period of Time to Comment and Request a Hearing or Intervention on the import/export applications filed by EnergySolutions, Inc. Written comments and a request for a hearing or petition for leave to intervene may be filed by June 10, 2008. Requests for hearing must be filed in accordance with the procedures set forth in 10 CFR part 110, subpart H.

This Notice is issued pursuant to my authority under 10 CFR 110.88.

Dated at Rockville, Maryland this 4th day of March, 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–4752 Filed 3–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Indian Point 3, LLC; Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License No. DPR–64, Indian Point Nuclear Generating Unit No. 3

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Nuclear Operations, Inc. (the licensee), to withdraw its October 24, 2007, application for proposed amendment to Facility Operating License No. DPR–64 for Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

The proposed amendment would have revised the refueling water storage tank low-low level alarm setpoint.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 4, 2007 (72 FR 68212). However, by letter dated February 8, 2008, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 24, 2007, and the licensee's letter dated February 8, 2008, which withdrew the application for a license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of February 2008.

For the Nuclear Regulatory Commission.

John P. Boska,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–4689 Filed 3–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–82]

Wolf Creek Nuclear Operating Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Wolf Creek Nuclear Operating Corporation (the licensee) to withdraw its application dated February 21, 2006, with supplemental letters dated May 3 and September 27, 2007, and January 25, 2008, for proposed amendment to Facility Operating License No. NPF–42 for the Wolf Creek Generating Station, located in Coffey County, Kansas.

The proposed amendment would have revised Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' to exclude portions of the steam generator tube below the top of the tubesheet from periodic tube inspections based on the application of structural analysis and leak rate evaluation results to re-define the primary-to-secondary pressure boundary. In addition, there were also proposed changes to add new reporting requirements to TS 5.6.10, ''Steam Generator Tube Inspection Report.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment, on the above proposed amendment application, that was published in the **Federal Register** on April 11, 2006 (71 FR 18377). However, by letter dated February 14, 2008, the licensee withdrew the proposed amendment.

For further details with respect to this action, see the application for amendment dated February 21, 2006, with supplemental letters dated May 3 and September 27, 2007, and January 25, 2008, and the licensee's letter dated February 14, 2008, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of February 2008.

For the Nuclear Regulatory Commission.

Balwant K. Singal,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–4687 Filed 3–7–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28183; 812–13418]

JPMorgan Trust I, et al.; Notice of Application

March 4, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

Summary of Application: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: JPMorgan Trust I, JPMorgan Trust II, JPMorgan Insurance Trust, J. P Morgan Mutual Fund Group, J. P Morgan Mutual Fund Investment Trust, J. P Morgan Fleming Mutual Fund Group, Inc., Undiscovered Managers Funds, JPMorgan Institutional Trust, J. P Morgan Series Trust II (collectively, the ''Trusts''), J. P Morgan Investment Management, Inc. (''JPMIM'')), JPMorgan Investment Advisors, Inc. (''JPMIA''), Security Capital Research & Management Incorporated (''Security Capital,'' collectively with JPMIM and JPMIA, the ''Advisors''), and JPMorgan Distribution Services, Inc. (the ''Distributor'').

Filing Dates: The application was filed on August 9, 2007, and amended on November 21, 2007 and January 30, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 31, 2008 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F Street, NE., Washington, DC 20549–1520; Applicants, c/o Jessica K. Ditullio, JPMorgan Funds, 1111 Polaris Parkway, Columbus, Ohio 43271.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551–6919, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0104 (telephone (202) 551–8090).

Applicants' Representations

1. Each Trust is organized as a Delaware statutory trust, a Maryland corporation or a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Trusts offer separate series (''Funds of Funds'') that may invest in other registered open-end management investment companies in reliance on section 12(d)(1)(G) of the Act and rule 12d1–2 under the Act (''Underlying Funds'' and together with the Funds of Funds, ''Funds'').[1] Applicants propose that the Funds of Funds be permitted to invest in financial instruments that may not be considered securities within the meaning of section 2(a)(36) of the Act (''Other Investments'') and are consistent with the investment objective of a Funds of Funds.[2]

2. The Advisors are Delaware or Ohio corporations that are indirect, wholly-owned subsidiaries of JPMorgan Chase & Co., a Delaware bank holding company holding company. The Advisors are registered as investment advisers under the Investment Advisers Act of 1940 and serve as investment adviser to the Funds. The Distributor, a Delaware corporation and a direct, wholly-owned subsidiary of JPMorgan Chase & Co., is registered as a broker-dealer under the Securities Exchange Act of 1934 Act (''Exchange Act'') and serves as the distributor for the Funds.

Applicants Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment

[1] Applicants request that the relief apply to all existing and future series of the Trusts and any other registered open-end management investment companies and their series that are in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trusts. All Funds that currently intend to rely on the order have been named as applicants. Any other existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions in the application.

company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provisions of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of trustees of a Fund of Funds, including a majority of the trustees who are not interested persons, as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract or the advisory contract of any other investment company in which the Funds of Funds may invest. Such a finding, and the basis upon which it was made, will be recorded fully in the minute books of the Fund of Funds.

2. Each Fund of Funds will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4616 Filed 3–7–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57425; File No. SR–ISE–2008–19]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Quarterly Options Series Pilot Program To Permit the Listing of Additional Series

March 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2008, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend Supplementary Material .03 to Rule 504, Quarterly Options Series Pilot Program, to permit the Exchange to list strike prices for Quarterly Options Series (''QOS'') in exchange traded fund (''ETF'') options that fall within a percentage range (30%) above and below the price of the underlying ETF. Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the ETF. Market Makers trading for their own account will not be considered when determining customer interest under this provision. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each QOS in ETF options. Further, the proposal includes a delisting program to be undertaken by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Exchange in connection with QOS in ETF options.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 this rule filing is to amend Supplementary Material .03 to Rule 504, Quarterly Options Series Pilot Program to allow the Exchange to open additional strike prices of QOS in ETF options that are within thirty percent (30%) above or below the closing price of the underlying ETF on the preceding business day. Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the underlying ETF. Market Makers trading for their own account will not be considered when determining customer interest under this provision. The Exchange will be permitted to list up to sixty (60) additional series per expiration month for each QOS in ETF options.

On May 2, 2006, the Exchange filed with the Commission a pilot program proposal to permit the listing and trading of QOS in options on indexes or options on ETFs that satisfy the applicable listing criteria under ISE rules.[5] QOS trade based on calendar quarters that end in March, June, September and December. The Exchange lists QOS that expire at the end of the next consecutive four calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange were trading QOS in iShares Russell 2000 Index Fund (''IWM'') in the month of April 2008, it would list series at the end of the second quarter 2008 (June), third quarter 2008 (September), fourth quarter 2008 (December) and first quarter 2009 (March) and fourth quarter 2009 (December).

Currently, the Exchange lists QOS in five ETF options: (1) Nasdaq–100 Index Tracking Stock (''QQQQ''); (2) IWM; (3) DIAMONDS Trust, Series 1 (''DIA''); (4) Standard & Poor's Depository Receipts/ SPDRs (''SPY''); and (5) Energy Select SPDR (''XLE''). The average trading volume and total volume for QOS in IWM options significantly exceeds the volumes for QOS in other ETF options that are listed and traded on the Exchange. The chart below provides trading volume figures for the fourth quarter in 2007, demonstrating that QOS in IWM options are by far the most popular and heavily traded QOS on the Exchange.

QOS	October 2007		November 2007		December 2007	
	ADV	Total vol.	ADV	Total vol.	ADV	Total vol.
IWM	19,132	440,035	23,529	494,107	28,970	579,399
QQQQ	7,943	182,689	12,510	262,707	18,856	377,123
SPY	3,740	86,022	15,067	316,399	19,984	399,686
DIA	709	16,314	1,671	35,092	2,202	44,043
XLE	778	17,901	6,141	128,966	1,925	38,507

Over time, the Exchange has continually received requests from market participants to add additional strike prices for QOS in IWM options that would be outside of the price range for setting strikes as provided under Supplementary Material .03 to Rule 504 (hereinafter ''+/−$5 range'').[6]

Investors and other market participants have advised the Exchange that they are buying and selling QOS in IWM options to trade volatility. In order to adequately replicate the desired volatility exposure, these market participants need to trade several IWM options series, many having strike prices that fall outside of the +/−$5 range currently allowed under the QOS rules.

In addition, other participants have advised the Exchange that their investment strategies involve trading options tied to a particular option ''delta,''[7] rather than a particular level of the underlying security or index. At issue is the fact that delta depends on both the relative difference between the level of the underlying security or index and the option strike price, and time to expiration. For example, with IWM trading at $85 per share, the strike price corresponding to a ''25-delta'' IWM call (i.e., a call option with a delta of 25) with one month to expiration would be 89. However, the strike price corresponding to a ''25-delta'' IWM call with 3 months to expiration would be 93, and the strike price of a ''25-delta'' IWM call with 1 year to expiration would be 106. In short, ISE has been advised that the +/−$5 range for QOS in IWM options is insufficient to satisfy customer demand.

In order to meet customer demand, the Exchange proposes to amend Supplementary Material .03 to Rule 504, which governs the Quarterly Options Series Pilot Program. Specifically, the Exchange proposes to revise Supplementary Material .03 to Rule 504 to allow the Exchange to open

[5] *See* Securities Exchange Act Release No. 54113 (July 7, 2006), 71 FR 39694 (July 13, 2006) (SR–ISE–2006–24) (''Pilot Program Approval Order''). Under the pilot program, the Exchange lists QOS in up to five currently listed option classes that are either options on ETFs or indexes. The Exchange also is permitted to list QOS in any options class that is selected by other securities exchanges that employ a similar pilot program under their respective rules.

[6] Supplementary Material .03 to Rule 504 provides that the Exchange shall list strike prices for a QOS that are within $5 from the closing price of the underlying on the preceding day.

[7] ''Delta'' is a measure of how an option price will change in response to a $1 price change in the underlying security or index. For example, an ABC option with a delta of ''50'' can be expected to change by $0.50 in response to a $1 change in the price of ABC.

additional strike prices of QOS in ETF options that are within thirty percent (30%) above or below the closing price of the underlying ETF Shares as defined in Rule 502(h) on the preceding business day. The Exchange also will be permitted to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the underlying ETF, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market Makers trading for their own account will not be considered when determining customer interest under this proposed provision. The Exchange will be permitted to list up to sixty (60) additional series per expiration month for each QOS in ETF options.

The Exchange also is proposing to add new paragraph (g) to Supplementary Material .03 to Rule 504, which will set forth a delisting policy. Specifically, with respect to QOS in ETF options, the Exchange will, on a monthly basis, review series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delist series with no open interest in both the put and the call series having a: (1) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (2) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

To illustrate how the proposed delisting program will work, assume that IWM closed at $70 on the day the Exchange conducts the monthly review of QOS in ETF options. Series having strike prices above $75 and below $65 would be reviewed by the Exchange for possible delisting. Assume that the Exchange lists the following QOS in IWM options that expire in June 2008:

Calls—Jun 08 exp		Puts—Jun 08 exp	
Strike	Open Interest?	Strike	Open Interest?
62	No	62	No.
63	No	63	Yes.
64	Yes	64	Yes.
*****	*****	*****	*****
76	Yes	76	Yes.
77	Yes	77	Yes.
78	Yes	78	Yes.
79	Yes	79	Yes.
80	Yes	80	Yes.
81	Yes	81	Yes.
82	Yes	82	Yes.
83	No	83	No.
84	No	84	No.
85	No	85	Yes.
86	Yes	86	No.
87	Yes	87	Yes.
88	Yes	88	Yes.
89	Yes	89	No.
90	Yes	90	No.
91	No	91	No.
92	No	92	No.
93	No	93	No.

The Exchange would delist the first series listed above, as well as the last three: $62, $91, $92 and $93. The Exchange would not, however, delist the $83 and $84 series because there are series having open interest with strike prices higher than these two series. In addition, the Exchange would not delist the $63 series because there is open interest in the put series.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in QOS in ETF options in series eligible for delisting shall be granted.

Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed QOS in ETF options. It is expected that all options exchanges that have a QOS Pilot Program will adopt the proposed delisting policy.

The Exchange represents that it has the necessary systems capacity to support new options series that will result from this proposal. Further, as proposed, the Exchange notes that this rule change will become part of the pilot program and, going forward, will be considered by the Commission when the Exchange seeks to renew or make permanent the pilot program in the future.[8]

2. Statutory Basis

Because the additional new series can be added without presenting capacity problems and because the Exchange has proposed a delisting policy with respect to QOS in ETF options, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder. Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5)[9] of the Act's requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that 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 Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] The Exchange notes that the proposed rule change is based on a similar proposal recently approved by the Commission.[12] The Exchange has asked the Commission to waive the operative delay to permit the proposed

[8] To the extent the Commission views the proposed rule change as an expansion of the pilot program, thus triggering the requirement under the terms of the Pilot Program Approval Order that the Exchange submit a pilot program report, the Exchange notes that it submitted a report on June 27, 2007, in connection with its filing to extend the pilot program through July 10, 2008. *See* Securities Exchange Act Release No. 56031 (July 9, 2007), 72 FR 38637 (July 13, 2007) (Notice of Filing and Immediate Effectiveness of SR–ISE–2007–53).

[9] 15 U.S.C. 78(f)(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

[12] *See* Securities Exchange Act Release No. 34–57410 (March 3, 2008) (SR–CBOE–2007–96).

rule change to become operative prior to the 30th day after 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 and will promote competition because such waiver will allow the Exchange to list additional series in Quarterly Options at the same time as other exchanges.[13] 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 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 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–2008–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–19 and should be submitted on or before March 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4599 Filed 3–7–08; 8:45 am]

BILLING CODE 8011–01–P

[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. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11182 and # 11183]

Missouri Disaster # MO–00021

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Missouri dated 03/03/2008.

Incident: Severe Storms, Tornadoes, High Winds, Hail and Flooding.

Incident Period: 01/07/2008 through 01/10/2008.

DATES: *Effective Date:* 03/03/2008.

Physical Loan Application Deadline Date: 05/02/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 12/03/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Webster.

Contiguous Counties: Missouri: Christian, Dallas, Douglas, Greene, Laclede, Wright.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.875
Homeowners Without Credit Available Elsewhere	2.937
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11182 B and for economic injury is 11183 0.

The State which received an EIDL Declaration # is _____ Missouri.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 3, 2008.

Steven C. Preston,

Administrator.

[FR Doc. E8–4581 Filed 3–7–08; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57421; File No. SR–NYSEArca–2008–24]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending Its Schedule of Fees and Charges Applicable to the Option Strategy Executions Pilot Program

March 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On February 29, 2008, the Exchange filed Amendment No. 1 to the proposal.[3] NYSE Arca has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend its Schedule of Fees and Charges in order to extend the pilot program that applies to Option Strategy Executions (''Pilot Program'') until March 1, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nysearca.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca 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 extend the Pilot Program that applies to Option Strategy Executions until March 1, 2009.[6] The transactions included as part of the Pilot Program include reversals and conversions,[7] dividend spreads,[8] box spreads,[9] short stock interest spreads,[10] and merger spreads.[11] Because the referenced Options Strategy Transactions are generally executed by professionals whose profit margins are generally narrow, the Pilot Program caps the transaction fees associated with such executions at $750 per strategy execution that are executed on the same trading day in the same option class. In addition, there is also a monthly cap of $25,000 per initiating firm for all strategy executions. The Exchange believes that by keeping fees low, the Exchange is able to attract liquidity by accommodating these transactions. Extending the Pilot Program until March 1, 2009 will allow the Exchange to keep these fees low and thus continue to attract liquidity.

OTP Holders and OTP Firms who wish to benefit from the fee cap will be required to submit to the Exchange forms with supporting documentation (*e.g.*, clearing firm transaction data) to qualify for the cap.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that, as proposed, the cap on transaction fees for Strategy Executions applies equally to each member (ETP holder) of the Exchange. The Exchange further believes that by keeping fees low with the proposed cap, the Exchange is able to attract liquidity by accommodating these transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[14] and subparagraph (f)(2) of Rule 19b–4 thereunder,[15] because it establishes or changes a due, fee or other charge imposed by the Exchange. 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.[16]

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–2008–24 on the subject line.

[3] Amendment No. 1 made clarifying changes to the original filing.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] The current rule text is substantially similar to the original filing approved in 2007. *See* Securities Exchange Act Release No. 55414 (March 7, 2007), 72 FR 11418 (March 13, 2007) (SR–NYSEArca–2007–25).

[7] Reversals and conversions are transactions that employ calls, puts and the underlying stock to lock in a nearly risk free profit. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

[8] Dividend spreads are trades involving deep in the money options that exploit pricing differences arising around the time a stock goes ex-dividend.

[9] A Box spread is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

[10] A short stock interest spread is a spread that uses two deep in the money put options of the same class followed by the exercise of the resulting long position in order to establish a short stock interest arbitrage position.

[11] A merger spread is a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices followed by the exercise of the resulting long option position.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 29, 2008, the date on which NYSE Arca filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–24. 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 No. SR–NYSEArca–2008–24 and should be submitted on or before March 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4556 Filed 3–7–08; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57417; File No. SR–NYSEArca–2008–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent Two Pilot Programs That Increase Position and Exercise Limits on Equity Options

March 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2008, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to make permanent two pilot programs that increase position and exercise limits for equity options. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to make permanent two pilot programs that increase position and exercise limits for equity options. The Exchange proposes to amend Rule 6.8, Position Limits, and Rule 6.9, Exercise Limits, to permanently establish the increased limits of the two pilot programs. Rule 6.8 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Rule 6.9 establishes exercise limits for equity options at the same levels as the applicable position limits.

The first pilot program, the ''Rule 6.8 Pilot Program,'' commenced on February 25, 2005, and provides for an increase to the standard (or ''non-pilot'') positions and exercise limits for equity option contracts and for options on the PowerShares QQQ Trust (''QQQQ'').[5]

The second pilot program, the ''iShares reg; Russell 2000 reg; Index Fund ('IWM') Option Pilot Program,'' commenced on January 29, 2007, and increases the position and exercise limits for IWM options from 250,000 contracts to 500,000 contracts.[6]

The IWM Option Pilot Program doubles the position and exercise limits for IWM options under the Rule 6.8 Pilot Program. *See* NYSEArca Rule 6.8, Commentary .06(g). Absent both of these pilot programs, the standard position and exercise limit for IWM options is 75,000 option contracts.

The standard position limits were last increased nine years ago, on December

[5] The Rule 6.8 Pilot Program was effective upon filing on February 25, 2005. *See* Securities Exchange Act Release No. 51286 (March 1, 2005), 70 FR 11297 (March 8, 2005) (SR–PCX–2003–55). The Pilot Program has been extended five times for six month periods by the Commission, and expires on March 1, 2008. *See* Securities Exchange Act Release Nos. 52263 (August 15, 2005), 70 FR 49003 (August 22, 2005) (SR–PCX–2005–95); 53350 (February 22, 2006), 71 FR 9406 (March 1, 2006) (SR–PCX–2006–08); 54385 (August 30, 2006), 71 FR 53150 (September 8, 2006) (SR–NYSEArca–2006–49); 55374 (February 26, 2007), 72 FR 9823 (March 5, 2007) (SR–NYSEArca–2007–19); and 56264 (August 15, 2007), 72 FR 47110 (August 22 2007) (SR–NYSEArca–2007–84).

[6] The proposal that established the IWM Pilot Program was effective upon filing. *See* Securities Exchange Act Release No. 55185 (January 29, 2007), 72 FR 5481 (February 6, 2007) (SR–NYSEArca–2007–10). The IWM Pilot Program was subsequently extended and is due to expire on March 1, 2008. *See* Securities Exchange Act Release Nos. 56021 (July 6, 2007), 72 FR 38115 (July 12, 2007) (SR–NYSEArca–2007–58); and 57174 (January 18, 2008), 73 FR 4655 (January 25, 2007) (SR–NYSEArca–2008–07).

31, 1998.[7] Since that time, there has been a steady increase in the number of accounts industry-wide that (a) approach the position limit; (b) exceed the position limits; and (c) are granted an exemption to the applicable position limit by either NYSE Arca, or another options exchange.

NYSE Arca has not encountered any problems or difficulties relating to either pilot program. In addition, the Exchange is unaware of any violations of the position and exercise limits under the pilot programs during the period in which both pilot programs were in effect.

Since the last position limit increase, there has been an exponential increase in the overall volume of exchange traded options. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participants has in turn brought about additional depth and increased liquidity in exchange traded options. Further, since the last position limit increase, and throughout the duration of the two pilot programs, the Exchange has not encountered any regulatory issues regarding the applicable position limits, and states that there is a lack of evidence of market manipulation schemes, which justifies making permanent the Rule 6.8 and IWM Option Pilot Programs.

As the anniversary of listed options trading approaches its 35th year, the Exchange believes that the existing surveillance procedures and option position reporting requirements at the Exchange, at other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. The Exchange's surveillance procedures include daily monitoring of firm and customer position reports via automated surveillance techniques to identify potential violations of position limits for options and their underlying securities.

Accordingly, the Exchange represents that its surveillance procedures (which have been significantly enhanced since the last position limit increase in 1999) and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes or assuming too high a level of risk exposure.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option.

The Exchange expects continued options volume growth as opportunities for investors to participate in the option markets increase and evolve. The Exchange believes that the non-pilot position and exercise limits are restrictive, and returning to those limits will hamper fair and effective competition between the listed options markets and the over-the-counter markets.

Equity option position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most actively traded equity options. To date, there have been no adverse affects on the markets as a result of these past increases in the limits for equity option contracts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] The Exchange notes that the proposed rule change is based on a similar proposal recently approved by the Commission.[11] The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Rule 6.8 Pilot Program and the IWM Option Pilot Program were scheduled to expire on March 1, 2008. The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because it will allow the position and exercise limits to remain at consistent levels during the transition from the pilot programs to permanent status.[12] Therefore, the Commission designates the proposal to be operative upon filing.

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 Act. Comments may be submitted by any of the following methods:

[7] *See* Securities Exchange Act Release No. 40875 (December 31, 1998) 64 FR 1842 (January 12, 1999) (SR–PCX–98–33).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 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.

[11] *See* Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (order granting accelerated approval to SR–CBOE–2008–07).

[12] 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).

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–NYSEArca–2008–26 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–26. 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 Commissions 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–NYSEArca–2008–26 and should be submitted on or before March 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4557 Filed 3–7–08; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57420; File No. SR–Phlx–2008–16]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Dividend, Merger, and Short Stock Interest Strategies Fee Cap Program

March 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2008, the Philadelphia Stock Exchange, 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. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend for a period of one year, until March 1, 2009, the pilot programs for: (1) The $1,000 and $25,000 fee caps on equity option transaction and comparison charges on dividend,[5] merger,[6] and short stock interest[7] strategies; and (2) the license fee of $0.05 per contract side imposed on dividend and short stock interest strategies, as described below. The current fee caps and $0.05 per contract side license fee are in effect as a pilot program that is scheduled to expire on March 1, 2008.[8] Other than extending the pilot program for an additional one-year period until March 1, 2009, no other changes to the Exchange's current dividend, merger and short stock interest strategy program, which includes the $0.05 per contract side license fee, are being proposed at this time.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.Phlx.com/exchange/phlx-rule-fil.htm.*

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 Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Phlx 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

Currently, the Exchange imposes a fee cap on equity option transaction and comparison charges on dividend, merger and short stock interest strategies executed on the same trading day in the same options class. Specifically, Registered Options Trader (''ROT'') and specialist net equity option transaction and comparison charges are capped at $1,000 for dividend, merger, and short stock interest strategies executed on the same trading day in the same options class.[9] In addition, there is a $25,000 per member organization fee cap on equity option transaction and comparison charges incurred in one month for dividend, merger and short stock interest strategies combined. The $1,000 and $25,000 fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] For purposes of this proposal, the Exchange defines a ''dividend strategy'' as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. *See, e.g.,* Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR–Phlx–2006–40).

[6] For purposes of this proposal, the Exchange defines a ''merger strategy'' as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock. *See id.*

[7] For purposes of this proposal, the Exchange defines a ''short stock interest strategy'' as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. *See id.*

[8] *See* Securities Exchange Act Release No. 55358 (February 27, 2007), 72 FR 9828 (March 5, 2007) (SR–Phlx–2007–14).

[9] *See id.*

comparison charges occurring as part of a dividend, merger, or short stock interest strategy. [10]

In addition, the Exchange assesses a license fee of $0.05 per contract side for dividend and short stock interest strategies in connection with certain products that carry license fees, if applicable.[11] The applicable license fee is assessed on every transaction and is not subject to the $1,000 or $25,000 fee caps described above, nor does it count towards reaching the $1,000 or $25,000 fee caps.

The purpose of extending the pilot program for the fee caps on equity option transaction and comparison charges on dividend, merger and short stock interest strategies and the $0.05 per contract fee imposed on dividend and short stock interest strategies until March 1, 2009 is to continue to attract additional liquidity to the Exchange and to remain competitive with other options exchanges in connection with these types of options strategies. In addition, the purpose of extending the pilot is to recoup the license fees owed in connection with the trading of products that carry license fees. Even with the assessment of the $0.05 license fee per contract side, the fee caps and rebates should continue to encourage specialists and ROTs to provide liquidity for these types of options strategies.

This proposal is scheduled to continue the fee for trades settling on or after March 1, 2008 and will remain in effect as a pilot program until March 1, 2009.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in particular, in that it is an equitable allocation of reasonable fees, and other charges among Exchange members. The Exchange believes that the proposed extension of the current fee caps is beneficial to its members by providing additional trading opportunities at an efficient cost. Additionally, the proposal allows the Exchange to recoup the license fees owed in connection with the trading of products that carry license fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and subparagraph (f)(2) of Rule 19b–4 thereunder,[15] since it establishes or changes a due, fee or other charge imposed by the Exchange. 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 the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2008–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–16. 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2008–16 and should be submitted on or before March 31, 2008.

For the Commission, by the Division of Trading and Market, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4558 Filed 3–7–08; 8:45 am]

BILLING CODE 8011–01–P

[10] Currently, the Exchange rebates $0.08 per contract side for ROT executions and $0.07 per contract side for specialist executions in connection with trades occurring as part of a dividend, merger or short stock interest strategy.

[11] For a complete list of these product symbols, see the Exchange's $60,000 Firm-Related Equity Option and Index Option Cap Fee Schedule.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6126]

Notice of Information Collection Under Emergency Review: DS–7646, U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship, New OMB 1405–xxxx

AGENCY: Department of State.

ACTION: Notice of request for emergency OMB approval.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* The U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship.

- *OMB Control Number:* None.
- *Type of Request:* Emergency Review.
- *Originating Office:* Bureau of International Organization Affairs, Office of UNESCO Affairs, Executive Secretariat U.S. National Commission for UNESCO (IO/UNESCO).
- *Form Number:* DS–7646.
- *Respondents:* U.S. college and university students applying for fellowship.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 100.
- *Average Hours per Response:* 10.
- *Total Estimated Burden:* 1000 hours.
- *Frequency:* On occasion.
- *Obligation to respond:* Required to obtain or retain a benefit.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by April 1, 2008. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), Washington, DC 20503. Fax number 202–395–6974.

During the first 60 days of the emergency approval period, a regular review of this information collection is also being undertaken. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments will be accepted until 60 days from the date that this notice is published in the **Federal Register**.

You may submit comments by any of the following methods:

- E-mail: *dcunesco@state.gov.*
- Mail (paper, disk, or CD–ROM submissions): U.S. National Commission for UNESCO, Office of UNESCO Affairs, 2121 Virginia Avenue, NW., Suite 6200, Washington, DC 20037.
- Fax: (202) 663–0035.

You must include the DS form number (DS–7646), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Alexander Zemek, Deputy Executive Director, U.S. National Commission for UNESCO, who may be reached at (202) 663–0026.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Fellowship applicants, U.S. citizen students at U.S. colleges and universities, will submit descriptions of self-designed proposals for brief travel abroad to conduct work that is consistent with UNESCO's substantive mandate to contribute to peace and security by promoting collaboration among nations through education, science, and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations. The information will be reviewed for the purpose of identifying the most meritorious proposals, as measured against the published evaluation criteria.

Methodology: The U.S. Department of State, Bureau of International Organization Affairs, Office of UNESCO Affairs, Executive Secretariat U.S. National Commission for UNESCO (IO/UNESCO) will collect this information via electronic submission.

Dated: March 5, 2008.

Alexander F. Zemek,

Deputy Executive Director, U.S. National Commission for UNESCO, Bureau of International Organization Affairs, Department of State.

[FR Doc. E8–4653 Filed 3–7–08; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 6128]

Culturally Significant Objects Imported for Exhibition Determinations: ''Fashioning Kimono: Art Deco and Modernism in Japan''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Fashioning Kimono: Art Deco and Modernism in Japan,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Philadelphia Museum of Art, from on or about April 26, 2008, until on or about July 20, 2008; Tyler Museum of Art, Tyler, Texas, from on or about June 6, 2009, to on or about August 16, 2009; Society of the Four Arts, Palm Beach, Florida, from on or about December 4, 2009, to on or about January 10, 2010; the Memorial Art Gallery, University of Rochester, Rochester, New York, from on or about January 30, 2010, to on or about April 11, 2010; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 4, 2008.

C. Miller Crouch,

Principal Deputy, Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–4659 Filed 3–7–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6127]

Culturally Significant Objects Imported for Exhibition Determinations: ''Wiener Werkstatte Jewelry''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Wiener Werkstatte Jewelry'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Neue Gallerie New York, New York, New York, from on or about March 27, 2008, until on or about June 30, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 28, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–4655 Filed 3–7–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Ninth Meeting: RTCA Special Committee 206/EUROCAE WG 76 Plenary

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 206 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: Aeronautical Information Services Data Link.

DATES: The meeting will be held March 31–April 4, 2008 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Honeywell, 21111 North 19th Avenue, Phoenix, AZ 85036–1111.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*; (2) Contact Person: Allan Hart, Telephone 1–609–436–1908; Fax 1–609–436–1501.

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 Special Committee 206 meeting/EUROCE WG 76. The agenda will include:

March 31

- 9 a.m.—Open Plenary
- Chairman's remarks and introductions
- Review and approve meeting agenda and minutes
- Discussion
- Coordination with WG78/SC214
- Action Item Review
- Schedule for this week
- Schedule for next meetings
- 10 a.m.—Presentations
- Pending
- 11 a.m.
- SPR and INTEROP

April 1

- AIS Subgroup meeting—Meteorology Subgroup meetings

April 2

- 9 a.m.
- Subgroup 1 and Subgroup 2 Meetings

April 3

- Subgroup 1 and Subgroup 2 Meetings

Apri1 4

- 9 a.m.
- Subgroup 1 and Subgroup 2 Meetings
- 10:30 p.m.
- Plenary Session
- Other Business, Meeting Plans and Dates, Closing Remarks, Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, 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 February 29, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–4518 Filed 3–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Proposed U.S. Highway Project in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l) (1). These actions relate to a proposed highway project to widen a two-lane conventional highway—State Route 12 in Napa and Solano Counties in the State of California—to four lanes and to convert its western terminus into an interchange. The State Route 12 widening portion of the project is between kilo post 0.0 and R4.2 (post miles 0.0 and R2.6) in Solano County, and between kilo post 0.4 and 5.3 (post mile 0.2 and 3.3) in Napa County. The interchange portion of the project is in Napa County between kilo post 0.0 and 0.4 (post mile 0.0 and 0.2) on State Route 12 and between kilo post 6.7 and 8.7 (post mile 4.2 and 5.4) on State Route 29.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139 (l) (1). A claim seeking judicial review of the Federal agency actions on the project will be barred unless the claim is filed on or before September 8, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Melanie Brent, Chief, Office of Environmental Analysis, 510–286–5231, *melanie.brent@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and

the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans prepared an Environmental Assessment on a proposal for a highway and intersection improvement project in Napa and Solano Counties, California.

The proposed project would widen the two-lane, conventional highway, State Route 12—from east of the city of Napa, in Napa County to near Red Top Road, west of the city of Fairfield, in Solano County—to four lanes (a distance of 5.7 miles) and convert its western terminus into an interchange. The State Route 12 widening portion of the project is between kilo post 0.0 and R4.2 (post miles 0.0 and R2.6) in Solano County, and between kilo post 0.4 and 5.3 (post mile 0.2 and 3.3) in Napa County. The interchange portion of the project is in Napa County between kilo post 0.0 and 0.4 (post mile 0.0 and 0.2) on State Route 12 and between kilo post 6.7 and 8.7 (post mile 4.2 and 5.4) on State Route 29. The project had two build alternatives pertaining to the design—tight diamond or single point urban-of the State Routes 29/12 interchange and a No Build alternative. The anticipated permits include:

Section 7 Incidental Take Statement for the California red-legged frog (from the U.S. Fish and Wildlife Service) under the Federal Endangered Species Act).

401 Water Quality Certification (from the Regional Water Quality Control Board) under section 401 of the Clean Water Act).

404 Individual Permit (from the U.S. Army Corps of Engineers) under section 404 of the Clean Water Act).

Public meeting(s) were held in Fairfield on September 13, 2007 and Napa on September 14, 2007. The Environmental Assessment, Finding of No Significant Impact, which were approved on January 31, 2008, and other documents are available for public and agency review at the Caltrans. Address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid-Highway Act [23 U.S.C. 109].

Land: Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 219].

Air: Clean Air Act 42 U.S.C. 7401–7671(q).

Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712]. Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303].

Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa)–11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d) (1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance Act and Real Property Acquisition Policies Act of 1970, as amended.

Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992 (k).

Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

[Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.]

Authority: 23 U.S.C. 139(l) (1).

Issued on: February 28, 2008.

Shawn A. Oliver,

South Team Leader.

[FR Doc. E8–4425 Filed 3–7–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking regular clearance of the following currently approved information collection activities granted under Emergency Clearance procedures. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than May 9, 2008.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590, or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0575.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov* or to Ms. Christodoulou at *gina.christodoulou@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration,

1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Solicitation of Applications and Notice of Funds Availability for the Capital Assistance to States—Intercity Rail Service Program.

OMB Control Number: 2130–0575.

Abstract: On December 16, 2007, President Bush signed Public Law 110–161, The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008. As part of this Act, Congress provided $30 million to FRA to award in one or more grants for eligible projects related to capital improvements (fixed facilities and rolling stock) necessary to support improved or new intercity passenger services, and planning activities that lead to the development of a passenger rail corridor investment plan. Funds provided under this grant program may constitute no more than 50 percent of the total cost of a selected project, with the remaining cost funded from other sources. The funding provided under these grants will be made available to grantees on a reimbursement basis.

FRA anticipates awarding grants to multiple eligible participants. FRA may choose to award a grant or grants within the available funds in any amount. Funding made available through grants provided under this program, together with funding from other sources that is committed by a grantee as part of a grant agreement, must be sufficient to complete the funded project and achieve the anticipated improvement to intercity passenger rail service. FRA will begin accepting grant applications on Monday, March 18, 2008. Applications may be submitted until the earlier of Wednesday, September 30, 2009, or the date on which all available funds will have been committed under this program.

Form Number(s): SF–269, SF–270, SF–271.

Affected Public: States/Their Partners.

Respondent Universe: 50 States and District of Columbia/Their Partners.

Frequency of Submission: One-time.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
Application Process	51 States (DC incl.)	7 applications	600 hours	4,200 hours	$367,780
Requested Meeting with FRA.	51 States (DC incl.)	5 requests/letters	30 minutes	3 hours	129
Actual Meetings	51 States (DC incl.)	5 meetings	2 hours	10 hours	730
Revisions to Grant Applications.	51 States (DC incl.)	2 appl. Revisions	40 hours	80 hours	5,840
Environmental Assessment.	51 States (DC incl.)	7 Env. Documents	200 hours	1,400 hours	175,000
Consultations with FRA	51 States (DC incl.)	7 consultations	2 hours	14 hours	1,022
Close-Out Procedures	51 States (DC incl.)	7 sets of documents	6 hours	42 hours	1,806
Project Reports	51 States (DC incl.)	7 reports	80 hours	560 hours	40,880

Total Responses: 47.

Estimated Total Annual Burden: 6,309 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 5, 2008.

Brenda Horn,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E8–4705 Filed 3–7–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

National Rural Transportation Assistance Program Request for Proposal (RFP); Correction

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice; request for proposals; correction.

SUMMARY: In the **Federal Register** Notice of February 26, 2008 (73 FR 10237), the

Federal Transit Administration published a notice regarding the National Rural Transportation Assistance Program Request for Proposals (RFP). The **DATES** and **Instruction** sections of this notice should be corrected to read as follows:

DATES: Proposals must be submitted electronically by April 11, 2008.

VII. Instructions

2. Proposals must be received no later than 5:30 p.m., EST, April 11, 2008.

Effective Date: This correction takes effect on February 26, 2008.

FOR FURTHER INFORMATION CONTACT: Pamela Brown at 202–493–2503, Fax: 202–366–7951, or via e-mail: *Pamela.Brown@dot.gov*, or Lorna Wilson at 202–366–2053; or via e-mail *lorna.wilson@dot.gov*.

Issued in Washington, DC this 4th day of March, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–4721 Filed 3–7–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–RSPA–2004–19856]

Pipeline Safety: Dangers of Abnormal Snow and Ice Build-Up on Gas Distribution Systems

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: Recent events on natural gas distribution system facilities appear to be related to either the stress of snow and ice or malfunction of pressure control equipment due to ice blockage of pressure control equipment vents by ice. This advisory bulletin advises owners and operators of gas pipelines of the need to take steps to prevent damage to pipeline facilities from accumulated snow or ice.

FOR FURTHER INFORMATION CONTACT: Alan Mayberry at (202) 366–5124, or by e-mail at *alan.mayberry@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The accumulation of snow and ice increases the potential for damage to meters and regulators and other pipeline facilities. Several accidents occurring during the winter of 2007/2008 on natural gas distribution system facilities appear to be related to either the stress of snow and ice or malfunction of pressure control equipment due to ice blockage of pressure control equipment vents. Exposed piping at metering and pressure regulating stations, at service regulators, and at propane tanks, are at greatest risk. Damage may result from the stresses imposed by the additional loading of the snow or ice. Damage to facilities may also result from the impact of snow or ice falling from roofs, or ice forming in or on regulators preventing their proper operation, or shoveling snow from roofs to protect dwellings from abnormal snow accumulation.

II. Advisory Bulletin (ADB–08–03)

To: Owners and Operators of Petroleum Gas and Natural Gas Facilities in Areas Subject to Heavy Snowfall or Abnormally Icy Weather.

Subject: Dangers of Abnormal Snow and Ice Build-up on Gas Distribution Systems.

Purpose: To inform owners and operators of the need (1) to monitor the potential impact of excessive snow and ice on these facilities; and (2) to inform the public about possible hazards from snow and ice accumulation on regulators and other pipeline facilities.

Advisory: PHMSA is advising operators of gas pipeline facilities, regardless of whether those facilities are regulated by PHMSA or state agencies, to consider the following steps to address the safety risks from accumulated snow and ice on pipeline facilities:

1. Notify customers and other entities of the need for caution associated with excessive accumulation and removal of snow and ice. Notice should include the need to clear snow and ice from exhaust and combustion air vents for gas appliances to prevent accumulation of carbon monoxide in buildings or operational problems for the combustion equipment.

2. Pay attention to snow and ice related situations that may cause operational problems for pressure control and other equipment.

3. Monitor the accumulation of moisture in equipment and snow or ice blocking regulator or relief valve vents which could prevent regulators and relief valves from functioning properly.

4. The piping on service regulator sets is susceptible to damage that could result in failure if caution is not exercised in cleaning snow from around the equipment. Where possible, use a broom, instead of a shovel to clear snow off regulators, meters, associated piping, propane tanks, tubing, gauges or other propane system appurtenances.

5. Remind the public to contact the gas company or designated emergency response officials if there is an odor of gas present or if gas appliances are not functioning properly. Also remind the public that, if there is a gas or propane odor, occupants should leave the residence immediately and contact their gas company, propane operator or designated emergency response officials.

Authority: 49 U.S.C. chapter 601; 49 CFR 1.53.

Issued in Washington, DC on March 5, 2008.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 08–999 Filed 3–6–08; 2:18 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–398 (Sub-No. 7X)]

San Joaquin Valley Railroad Company—Abandonment Exemption—in Tulare County, CA

On February 19, 2008, San Joaquin Valley Railroad Company (SJVR) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 30.57-mile portion of the South Exeter Branch between milepost 268.60 at Strathmore, CA, and milepost 299.17 at Jovista, CA, in Tulare County, CA. The line traverses United States Postal Service Zip Codes 93218, 93221, 93247, 93257, 93258, 93261, 93267, and 93270, and includes the stations of Strathmore (milepost 268.60), Porterville (milepost 274.80), Elmco (milepost 280.10), Ultra (milepost 282.00), Terra Bella (milepost 282.60), Ducor (milepost 287.10), Richgrove (milepost 294.90), and Jovista (milepost 299.17).

The line does not contain federally granted rights-of-way. Any documentation in SJVR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

SJVR states that the proposed abandonment may generate comments or replies, and it requests that the Board adopt a procedural schedule in this proceeding to permit SJVR to file rebuttal to any comments or replies received. Rather than address the request at this time, however, the Board

will instead allow SJVR to raise the matter again, if comments and replies in response to the petition are actually filed. Comments and replies to the petition for exemption will be due March 31, 2008. Once comments or replies are filed, SJVR may request leave to file rebuttal.

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 6, 2008.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 31, 2008 Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–398 (Sub-No. 7X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204. As noted above, replies to the petition are due on or before March 31, 2008.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Government and Public Affairs at (202) 245–0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: February 28, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–4421 Filed 3–7–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Zuckert, Scoutt & Rasenberger, LLP on behalf of Norfolk Southern Railway Company (WB568–5—3/4/08), for permission to use certain data from the Board's 2006 Carload Waybill Sample. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 245–0317.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–4709 Filed 3–7–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, as Amended

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed New Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Office of Financial Education, gives notice of a proposed new system of records entitled ''National Financial Literacy Challenge Records—Treasury/DO .217.''

DATES: Comments must be received no later than April 9, 2008. This new system of records will be effective April 21, 2008 unless the Office of Financial Education receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Edwin Bodensiek, Director of Outreach for Financial Education, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0204. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Edwin Bodensiek, Director of Outreach for Financial Education, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at 202–622–8811 or via electronic mail at *ed.bodensiek@do.treas.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this system is to determine award eligibility under the program described below which is expected to be called the National Financial Literacy Challenge or a similar name, (''Challenge''), and to provide data for analysis on improving financial literacy. The Challenge is a new initiative in which participating high school students age 13 and above voluntarily take a test of their financial literacy. The Challenge consists of approximately 35 substantive multiple choice questions about savings, credit, income, financial responsibility, and money and risk management, as well as approximately seven demographic questions on items such as the student's age, grade level (*i.e.*, sophomore, junior, etc.) gender, race and/or ethnicity. Students who attain sufficiently high scores will receive certificates and/or awards. The Department may seek to publicly recognize top-scoring students, but will obtain parental consent prior to doing so.

The test questions would not be part of the system of records because the questions would not ask for personally identifiable information. The system of records will include, for test participants, the high schools' names and addresses; students' names; students' scores; student names,

teachers, and high schools of award winners; teachers' names; teachers' business email addresses; and teachers' business phone numbers.

The report of a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed new system of records entitled ''National Financial Literacy Challenge Records—Treasury/DO .217'' is published in its entirety below.

Dated: March 4, 2008.

Peter B. McCarthy,

Assistant Secretary for Management and Chief Financial Officer.

TREASURY/DO .217

SYSTEM NAME:

National Financial Literacy Challenge—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Office of Financial Education, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system will be those high school students age 13 and older and their teachers who participate in the test.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will include, for Challenge participants, the high schools' names and addresses; students' names and scores; high school names of award winners; teachers' names, teachers' business email addresses and business phone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 13455.

PURPOSE(S):

The records in this system will be used to identify students whose scores on the Challenge meet the guidelines for award recognition and to distribute the awards to the teachers, who in turn will distribute the awards to the students. Aggregate data and reports related to the program that may be generated and used for analysis will be in a form that is not individually identifiable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES

These records may be used to disclose information to:

(1) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(2) A congressional office in response to an inquiry made at the request of the individual (or the individual's parents or guardians) to whom the record pertains;

(3) A contractor or a sponsor, operating in conjunction with the Office of Financial Education to the extent necessary to present appropriate awards;

(4) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm, and

(5) These records may be used to disclose award winners to the participant's high school.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Students' scores will be retrievable by name, teacher, and school. Teacher data is retrievable by the name and contact information of the teacher. School information is retrievable by the name and location of the school.

RETENTION AND DISPOSAL:

Records will be destroyed at the earliest possible date consistent with applicable records retention policies.

SAFEGUARDS:

All official access to the system of records is on a need-to-know basis only, as authorized by the Office of Financial Education of the U.S. Treasury Department. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, will be utilized. Each user of computer systems containing records will have individual passwords (as opposed to group passwords) for which the user is responsible. Access to computerized records will be limited, through use of access codes, encryption techniques, and/or other internal mechanisms, to those whose official duties require access. Storage facilities will be secured by various means such as locked file cabinets with key entry.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Outreach, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to records maintained in this system, or seek to contest its content, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (See 31 CFR Part 1, Appendix A). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORDS ACCESS PROCEDURES:

See ''notification procedure'' above.

CONTESTING RECORDS PROCEDURES:

See ''notification procedure'' above.

RECORDS SOURCE CATEGORIES:

Student test takers; high school points of contact; and Department of the Treasury records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–4629 Filed 3–7–08; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled ''(MA) Loans in Areas Having Special Flood Hazards (12 CFR 22)''.

DATES: You should submit written comments by: May 9, 2008.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1–5, Attention: 1557–0202, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0202, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA) Loans in Areas Having Special Flood Hazards—12 CFR Part 22.

OMB Control Number: 1557–0202.

Description: The regulation requires national banks to make disclosures and keep records regarding whether a property securing a loan is located in a special flood hazard area. This information collection is required by section 303(a)[1] and title V of the Riegle Community Development and Regulatory Improvement Act,[2] the National Flood Insurance Reform Act of 1994 amendments to the National Flood Insurance Act of 1968[3] and the Flood Disaster Protection Act of 1973,[4] and by OCC regulations implementing those statutes. The information collection requirements are contained in 12 CFR part 22.

Section 22.6 requires a national bank to use and maintain a copy of the Standard Flood Hazard Determination Form developed by the Federal Emergency Management Agency (FEMA).

Section 22.7 requires a national bank or its loan servicer, if a borrower has not obtained flood insurance, to notify the borrower to obtain adequate flood insurance coverage or the bank or servicer will purchase flood insurance on the borrower's behalf.

Section 22.9 requires a national bank making, extending, increasing or renewing a loan secured by a building or a mobile home to advise the borrower and the loan servicer that the property is located in a special flood hazard area, provide a description of the flood insurance purchase requirements, and provide information regarding the availability of insurance under the National Flood Insurance Program and Federal assistance in the event of a declared Federal flood disaster. The bank must maintain a record of the borrower's and loan servicer's receipts of these notices.

Section 22.10 requires a national bank making, increasing, extending, renewing, selling or transferring a loan secured by a building or a mobile home located in a special flood hazard area to notify FEMA of the identity of the servicer, and of any change in servicers.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2,300.

Estimated Total Annual Responses: 230,000.

Estimated Frequency of Response: On occasion.

Estimated Time per Respondent: 25.5 hours.

Estimated Total Annual Burden: 58,650 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 4, 2008.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E8–4623 Filed 3–7–08; 8:45 am]

BILLING CODE 4810–33–P

[1] 12 U.S.C. 4804.

[2] 42 U.S.C. 4104(a).

[3] 12 U.S.C. 4104a and 4104b.

[4] 12 U.S.C. 4012a and 4106(b).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, ''(MA)—Management Official Interlocks—12 CFR 26.''

DATES: You should submit written comments by May 9, 2008.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1–5, Attention: 1557–0196, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0196, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)—Management Official Interlocks—12 CFR 26.

OMB Control Number: 1557–0196.

Description: Under the Interlocks Act, two competing depository institutions generally may not share management officials. However, the OCC has legal authority to implement exemptions to this general prohibition. One such prohibition prohibits a management official of a depository organization from serving at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same relevant metropolitan statistical area and each depository organization has total assets of $20 million or more. Section 610 of the Financial Services Regulatory Relief Act of 2006 (12 U.S.C. 3202(1)) raises the total asset threshold of the depository organization to $50 million. The change was effective as of October 13, 2006 and adopted by the OCC on January 11, 2007. This submission covers this change.

The information is needed to prevent any management official interlock that would result in a monopoly or substantial lessening of competition. The OCC needs the information to grant exemptions that foster competition between unaffiliated institutions.

The OCC uses the information to ensure that a proposed management interlock is permitted under statute, is eligible for an exemption under section 2210(c) of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (12 U.S.C. 3207), and does not have an anticompetitive effect.

Type of Review: Regular Review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2.

Estimated Total Annual Responses: 2.

Estimated Frequency of Response: On occasion.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden: 4 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 4, 2008.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E8–4624 Filed 3–7–08; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service

Proposed Collection of Information: Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary; and Resolution Authorizing the Financial Institution Agreement and Application.

AGENCY: Financial Management Service, Fiscal Service, Treasury

ACTION: Notice and Request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the FMS 458 and FMS 459 forms ''Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary; and Resolution Authorizing the Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary.''

DATES: Written comments should be received on or before May 9, 2008.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mauricio Mattos, Investment Management Division, 401 14th Street, SW., Room 318A, Washington, DC 20227, (202) 874–7868.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary; and Resolution Authorizing the Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary.

OMB Number: 1510–0052.

Form Numbers: FMS 458 and FMS 459.

Abstract: Financial institutions are required to complete an Agreement and Application to participate in the Federal Tax Deposit/Treasury Tax and Loan Program. The approved application designates the depositary as an authorized recipient of taxpayers' deposits for Federal taxes.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 450.

Estimated Time Per Respondent: 30 minutes (15 mins. per form).

Estimated Total Annual Burden Hours: 225.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Sheryl R. Morrow,

Assistant Commissioner, Federal Finance.

[FR Doc. E8–4385 Filed 3–7–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Narcotics Trafficker Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of an individual whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Narcotics Traffickers of the individual identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on March 4, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

On March 4, 2008, the Director of OFAC removed from the list of Specially Designated Narcotics Traffickers the individual listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked individual follows:

AVENDANO GUTIERREZ, Francisco Eduardo, Carrera 8 No. 66–21 apt. 204, Bogota, Colombia; Transversal 1A No. 69–54 apt. 502, Bogota, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogota, Colombia; c/o CONSTRUCCIONES AVENDANO GUTIERREZ Y CIA. LTDA., Bogota, Colombia; DOB 3 Jul 1960; Cedula No. 16645182 (Colombia) (individual) [SDNT]

Dated: March 4, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–4610 Filed 3–7–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated National Pursuant to Executive Order 13219, as Amended

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of an entity whose property and interests in property have been unblocked pursuant to Executive Order 13219 of June 26, 2001, *Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans,* as amended by Executive Order 13304 of May 28, 2003, *Termination of Emergencies With Respect to Yugoslavia and Modification of Executive Order 13219 of June 26, 2001.*

DATES: The unblocking and removal from the list of the entity identified in this notice whose property and interests in property were blocked pursuant to Executive Order 13219 of June 26, 2001, as amended, is effective on March 4, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On June 27, 2001, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13219 (''E.O. 13219''). In E.O. 13219, the President declared a national emergency to deal with the threat posed by extremist violence in the Western Balkans and acts intended to obstruct implementation of the Dayton Accords in Bosnia or United Nations Security Council Resolution 1244 in Kosovo.

On May 28, 2003, the President issued Executive Order 13304 (''E.O. 13304''), terminating the national emergencies declared in Executive Order 12808 of May 30, 1992, and Executive Order 13088 of June 9, 1998, with respect to the former Socialist Federal Republic of Yugoslavia, revoking those and related executive orders, and taking additional steps with regard to the national emergency declared in E.O. 13219.

Section 1 of E.O. 13219, as amended by E.O. 13304, blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (i) The persons listed in the Annex to E.O. 13304; and (ii) persons designated by the Secretary of the Treasury, in consultation with the Secretary of State, because they are determined: (A) To be under open indictment by the International Criminal Tribunal for the former Yugoslavia, unless circumstances warrant otherwise, or (B) to have committed, or to pose a significant risk of committing, acts of violence that have the purpose of threatening the peace in or diminishing the stability or security of any area or state in the Western Balkans region, undermining the authority, efforts, or objectives of international organizations or entities present in the region, or endangering the safety of persons participating in or providing support to the activities of those international organizations or entities, or (C) to have actively obstructed, or to pose a significant risk of actively obstructing, the Ohrid Framework Agreement of 2001 relating to Macedonia, United Nations Security Council Resolution 1244 relating to Kosovo, or the Dayton Accords or the Conclusions of the Peace Implementation Conference held in London on December 8–9, 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council or its Steering Board, relating to Bosnia and Herzegovina, or (D) to have materially assisted in, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such acts of violence or obstructionism, or any person listed in or designated pursuant to this order, or (E) to be owned or controlled by, or acting or purporting to act directly or indirectly for or on behalf of, any of the foregoing persons.

On March 4, 2008, the Director of OFAC removed from the list of Specially Designated Nationals the entity listed below, whose property and interests in property were blocked pursuant to E.O. 13219, as amended.

The listing of the unblocked entity follows:

SRPSKE SUME: State Forestry Company (Republika Srpska) (a.k.a. SRBSKE SUME; a.k.a. SRPSKA SUME), Sokolac, Bosnia-Herzegovina [BALKANS]

Dated: March 4, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–4617 Filed 3–7–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of United States Mint Coin Product Price Adjustment

SUMMARY: The United States Mint is announcing the price of the 2008 American Eagle Silver Uncirculated Coin.

Because of increases in the cost of silver, the United States Mint will begin accepting orders for the 2008 American Eagle Silver Uncirculated Coin at the price indicated below, effective March 17, 2008:

Product	2007 price	New 2008 coin price
American Eagle Silver Uncirculated Coin	$21.95	$25.95

FOR FURTHER INFORMATION CONTACT: Gloria C. Eskridge, Associate Director for Sales and Marketing; United States Mint; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: March 3, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8–4688 Filed 3–7–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0067]

Proposed Information Collection (Application for Automobile or other Conveyance and Adaptive Equipment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine claimants' eligibility for automobile adaptation equipment or other conveyance allowance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 9, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0067'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Automobile or other Conveyance and Adaptive Equipment (under 38 U.S.C. 3901–3904), VA Form 21–4502.

OMB Control Number: 2900–0067.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and servicepersons complete VA Form 21–4502 to apply for automobile or other conveyance allowance, and reimbursement for the cost and installation of adaptive equipment. The claimants must possess one of the following disabilities that resulted from injury or a disease that was incurred or aggravated during active military service: (1) Loss or permanent loss of use of one or both feet, or hands; (2) permanent impairment of vision in both eyes with a central visual acuity of 20/200 or less in the better eye with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field had contracted to such an extent that the widest diameter of visual field has an angular distance no greater than 20 degrees in the better eye. VA uses the information to determine the claimant's eligibility for such benefits.

Affected Public: Individuals and households.

Estimated Annual Burden: 388.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,552.

Dated: February 27, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–4696 Filed 3–7–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0393]

Agency Information Collection (VAAR Part 813) 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, 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 April 9, 2008.

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. 2900–0393'' 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. 2900–0393.''

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) part 813.

OMB Control Number: 2900–0393.

Type of Review: Extension of a currently approved.

Abstract: VA collects acquisition information from firms and individuals who wish to sell supplies, services, and construction or who wish to establish blanket purchase agreements (BPA) or other contractually related agreements with VA. VA uses the information collected to determine to whom to award contracts or with whom to enter into BPAs or other contractually related agreements.

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 December 6, 2007, at pages 68963–68964.

Affected Public: Business or other for-profit, Individuals and households, not-for-profit institutions, and State, local or tribal government.

Estimated Annual Burden: 20,845 hours.

Estimated Average Burden per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,845.

Dated: February 27, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–4701 Filed 3–7–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0422]

Agency Information Collection (VAAR Clauses 852.236–72, 852.236–82, 852.236–83, 852.236–84, 852.236–88) 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, 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 April 9, 2008.

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. 2900–0422'' 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. 2900–0422.''

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Department of Veterans Affairs Acquisition Regulation (VAAR) Clauses 852.236–72, 852.236–82, 852.236–83, 852.236–84, 852.236–88, Performance of Work by the Contractor.

b. Department of Veterans Affairs Acquisition Regulation (VAAR) Alternate I to Clause 852.236–80, Subcontracts and Work Coordination.

c. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1.

d. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1.

e. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–84, Schedule of Work Progress.

f. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes.

OMB Control Number: 2900–0422.

Type of Review: Extension of a currently approved.

Abstract: The information contained Department of Veterans Acquisition Regulation (VAAR) Clauses 852.236–72, Alternate I to 852.236–80, 852.236–82, 852.236–83, 852.236–84, and 852.236–88, is necessary for VA to administer construction contracts, and to carry out its responsibility to construct, maintain and repair real property for the Department.

a. VAAR Clause 852.236–72, Performance of Work by the Contractor, requires contractors awarded a construction contract containing Federal Acquisition Regulation (FAR) clause 52.236–1, to submit a statement designating the branch or branches of contract work to be performed by the contractor's own forces. The VAAR clause implements the FAR clause by requiring the contractor to provide information to the contracting officer on how the contractor intends to fulfill this contractual obligation. The contracting officer uses this information to ensure that the contractor complies with the contract requirements.

b. Alternate I to Clause 852.236–80, Work Coordination, require construction contractors, on contracts involving complex mechanical-electrical work, to furnish coordination drawings showing the manner in which utility lines will fit into available spaces and relate to each other and to the existing building elements. The information is used by the contracting officer and VA engineer assigned to the project to resolve any problems relating to the installation of utilities on construction contract.

c. VAAR Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), requires construction contractors to submit a schedule of costs for work to be performed under the contract. If the contract includes guarantee period services, Alternate I requires contractor to submit information on the total and itemized costs of the guarantee period services and to submit a performance plan/program. The information is needed to allow the contracting officer to determine the correct amount to pay the contractor as work progresses and to properly proportion the amount paid for guarantee period services.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), requires construction contractors to submit a schedule of costs for work to be performed under the contract. If the contract includes guarantee period services, Alternate I requires contractor to submit information on the total and itemized costs of the guarantee period services and to submit a performance plan/program. The information is needed to allow the contracting officer to determine the correct amount to pay the contractor as work progresses and to properly proportion the amount paid for guarantee period services. The difference between this clause and the one above 852.236–82 is that this clause requires the contractor to use a computerized Network Analysis System (NAS) to prepare the cost estimate.

e. VAAR Clause 852.236–84, Schedule of Work Progress, requires construction contractors, on contracts that do not require the use of a NAS, to submit a progress schedule. The information is used by the contracting officer to track the contractor's progress under the contract and to determine whether or not the contractor is making satisfactory progress.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes. FAR Clause 52.243–4 authorizes the contracting officer to order changes to a construction contract but does not specifically require the contractor to submit cost proposals for those changes. VAAR Clause 852.236–88 requires contractors to submit cost proposal for changes ordered by the contracting officer or for changes proposed by the contractor. This

information is needed to allow the contracting officer and the contractor to reach a mutually acceptable agreement on how much to pay the contractor for the proposed changes to the contract. It is also used by the contracting officer to determine whether or not to authorize the proposed changes or whether or not additional or alternate cost proposals for changes are needed.

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 December 6, 2007, at pages 68956–68957.

Affected Public: Business or other for-profit; individuals and households; and not-for-profit institutions.

Estimated Annual Burden:

a. VAAR Clause 852.236–72, Performance of Work by the Contractor—36 hours.

b. VAAR Alternate I to Clause 852.236–80, Subcontracts and Work Coordination—1,190 hours.

c. VAAR Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1—1,397.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1—59 hours.

e. VAAR Clause 852.236–84, Schedule of Work Progress—2,095 hours.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes—807 hours.

Estimated Average Burden per Respondent:

a. VAAR Clause 852.236–72, Performance of Work by the Contractor—1 hour.

b. VAAR Alternate I to Clause 852.236–80, Subcontracts and Work Coordination—10 hours.

c. VAAR Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1—1 hour.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1—30 minutes.

e. VAAR Clause 852.236–84, Schedule of Work Progress—1 hour.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes—3 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAAR Clause 852.236–72, Performance of Work by the Contractor—36.

b. VAAR Alternate I to Clause 852.236–80, Subcontracts and Work Coordination—119.

c. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1—1,397.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1—119.

e. VAAR Clause 852.236–84, Schedule of Work Progress—1,397.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes—269.

Dated: February 27, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–4704 Filed 3–7–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0623]

Agency Information Collection (VAAR Clause 852.236.91) 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, 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 April 9, 2008.

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. 2900–0623'' 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. 2900–0623.''

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236.91.

OMB Control Number: 2900–0623.

Type of Review: Extension of a currently approved.

Abstract: VAAR Clause 852.236.91 requires bidders to furnish information on previous experience, technical qualifications, financial resources, and facilities available to perform the work. The clause also requires contractors submitting a claim for price adjustment due to severe weather delay to provide climatologically data covering the period of the claim and covering the same period for the ten preceding years. VA uses the data collected to evaluate the bidder's qualification and responsibility, and to evaluate the contractor's claims for contract price adjustment due to weather-related delays.

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 December 6, 2007, at pages 68957–68958.

Affected Public: Business or other for-profit; Individuals and households; and not-for-profit institutions.

Estimated Annual Burden: 778 hours.

a. Qualifications Data: 758 hours.

b. Weather Data: 20 hours.

Estimated Average Burden per Respondent:

a. Qualifications Data: 30 min.

b. Weather Data: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,536.

a. Qualifications Data: 1516.

b. Weather Data: 20.

Dated: February 27, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–4708 Filed 3–7–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
March 10, 2008

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 224

Tribal Energy Resource Agreements Under the Indian Tribal Energy Development and Self-Determination Act; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 224

RIN 1076–AE80

Tribal Energy Resource Agreements Under the Indian Tribal Energy Development and Self-Determination Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Secretary of the Interior (Secretary) is promulgating final regulations providing that Indian tribes, at their discretion, may enter into business agreements and leases for energy resource development and grant rights-of-way for pipelines or electric transmission or distribution lines on tribal land without the Secretary's review and approval. Indian tribes entering into such business agreements, leases, and grants of rights-of-way must execute them under an approved tribal energy resource agreement (TERA) between the Secretary and the tribe. These final regulations provide the process under which a tribe may apply for, and the Secretary may grant, authority for an Indian tribe to review and approve leases and business agreements and grant rights-of-way for specific energy development activities on tribal lands through an approved TERA. The regulations also cover processes for implementation of TERAs, including periodic review and evaluation of a tribe's activities under a TERA, enforcement of TERA provisions, and administrative appeals. The regulations also include a process for a tribe's voluntarily rescinding a TERA.

DATES: This rule is effective April 9, 2008.

ADDRESSES: Further information or questions regarding this final rule should be addressed in writing to Robert Middleton, Director, Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245. Please include your name and return address.

FOR FURTHER INFORMATION CONTACT: Darryl Francois, Program Analyst, Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245, Telephone (202) 219–0740 or Fax (202) 208–4564.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule
III. Discussion of Comments on Proposed Regulations and Responses
IV. Procedural Matters

I. Background

The Secretary is issuing this part under authority of the Indian Tribal Energy Development and Self-Determination Act of 2005, Pub. L. 109–58, 119 Stat. 763, 25 U.S.C. 3501–3504, and 25 U.S.C. 2 and 9.

Title V, Section 503, of the Energy Policy Act of 2005 (Pub. L. 109–58) amended Title XXVI (Indian Energy) of the Energy Policy Act of 1992 to require the Secretary of the Interior (Secretary) to promulgate regulations that implement provisions concerning tribal energy resource development on tribal lands. Specifically, the Indian Tribal Energy Development and Self-Determination Act of 2005, Title XXVI, Section 2604 of the Energy Policy Act, as amended, authorizes tribes, at their discretion, to apply for and enter into TERAs with the Secretary. Upon Secretarial approval of TERAs, tribes may enter into energy-related business agreements and leases, and grant rights-of-way for pipelines and electric transmission and distribution lines, on tribal lands without the Secretary's review and approval. Implementation of the final regulations providing for TERAs will further the Federal Government's policy of providing enhanced self-determination and economic development opportunities for Indian tribes by promoting tribal oversight and management of energy resource development on tribal lands. The Act and the regulations provide another process, in addition to the Indian Minerals Development Act and the Indian Mineral Leasing Act, under which tribes may develop their mineral resources. Implementation of these regulations will also support the national energy policy of increasing utilization of domestic energy resources. As stated in the final regulations, the Secretary will interpret and implement these regulations and the Act in keeping with the self-determination and energy development provisions and policies of the Act. In drafting the proposed regulations and finalizing regulations, the Secretary has diligently attempted to conform to the requirements of the Act and to address concerns that arose during the tribal consultation and discussion of the proposed regulations during the public comment process.

The Secretary held a series of public meetings and tribal consultations in January 2006 to solicit stakeholder and tribal comments on the implementation of the Act. In addition, in two letters to tribal leaders, the Secretary solicited the direct involvement of tribes in drafting a framework for the development of proposed regulations. The Secretary identified three primary issues based on the written and oral comments: Whether the definition of tribal land on which tribes may conduct TERA-authorized activities should include tribal fee land; what criteria the Secretary will use to determine that a tribe has sufficient capacity to regulate its energy resource development; and what will constitute adequate environmental review of leases, business agreements, and rights-of-way a tribe may include or enter into under an approved TERA.

Definition of Tribal Lands—In the preamble to the proposed regulations, the Secretary specifically sought public comment on the alternate definition of tribal land some tribes proposed: ''Those lands for which the Secretary has determined that interests in real property held in fee by a tribe and located outside of Indian Country, as defined in 18 U.S.C. 1151, are not subject to a restriction on alienation, unless otherwise specifically imposed by Congress.'' In addition, the alternate definition of tribal land included the statement that ''should a final, non-appealable decision of a court of competent jurisdiction invalidate the Secretary's determination that such land is not subject to a restriction on alienation and conclude such land is subject to a restriction on alienation, this definition of Tribal land will include real property held in fee by a tribe, regardless of location, except in those instances in which Congress has removed the restriction on alienation.''

In comments on the proposed regulations, some tribes suggested that this more expansive definition of tribal lands had the potential to create more economically robust energy resource development projects by allowing TERA projects on tribal fee land. The Act, at 25 U.S.C. 3501(12), defines tribal land as ''any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States, or is subject to a restriction against alienation under the laws of the United States.'' Following publication of the proposed regulations, at § 224.30 *Definitions*, in which the Secretary used the statutory definition, the Secretary considered public comments received in support of the definition in the proposed regulations and the alternate definition of tribal land offered in the preamble. The Secretary determined that public comments for the alternate definition of tribal land did not provide a convincing or compelling legal argument, nor statutory or other legal support, for changing the statutory definition of

tribal land to include tribal fee land in the regulatory definition. In response to comments, the Secretary added ''or mineral interests'' after ''interests in land'' and added ''or tribes'' after ''any Indian tribe'' to clarify that tribal mineral interests severed from the surface estate and tribal jointly held interests are included in the definition of tribal land.

Criteria for Determining Tribal Capacity—The Act requires that the implementing regulations include criteria the Secretary will use to determine that a tribe has sufficient capacity to manage. In the preamble to the proposed regulations, the Secretary specifically sought public comment concerning sufficient criteria to enable the Secretary to determine a tribe's capacity to manage the full scope of administrative, regulatory, and energy resource development a tribe proposes to assume under an approved TERA. The proposed regulations require that a tribe considering entering into a TERA participate in a pre-application process designed to provide a preliminary analysis of the type of expertise necessary to manage the particular type of energy resource development that the tribe contemplates. Under the proposed regulations, as part of the TERA application process, a tribe must describe the level of expertise it possesses to manage the energy resource development within the scope of the proposed TERA or how the tribe will acquire the needed expertise. As the Act requires, criteria the Secretary developed for the proposed regulations include the tribe's experience managing natural resources and the administrative and financial resources that will be available to it when implementing an approved TERA.

Environmental Review Processes—The Secretary specifically requested comments during the consultation process and in the preamble to the proposed regulations on additional environmental review requirements a tribe must meet beyond the minimum included in the Act. The regulations require that a TERA include provisions that establish a tribal environmental review and compliance process for any potential environmental impacts that may occur from a lease, business agreement, or right-of-way that a tribe plans to enter into.

A main component of the regulations regarding a tribe's approval authority for leases, business agreement, and rights-of-way is ensuring compliance with environmental laws. Under the regulations a tribe must include in its TERA: all required provisions for the tribe's and any third party's compliance with Federal environmental laws in regard to leases, business agreements, and rights-of-way entered into or granted under an approved TERA; provisions that the tribe include public notice and opportunity for public comment on the potential environmental effects of leases, business agreements, and rights-of-way a tribe proposes to enter into or grant under an approved TERA; provisions that the tribe notify the Secretary of any violation or breach; provisions that acknowledge that the Secretary may take various actions, including reassumption of the authority granted in a TERA, when the Secretary finds that there is imminent jeopardy to a physical trust asset; and the Secretary's remedies for an interested party who shows that an interest of the party has sustained or will sustain an adverse environmental impact as a result of a tribe's non-compliance with the terms of an approved TERA.

The Secretary will also develop with a tribe in the application process, include in an approved TERA, and conduct throughout the period an approved TERA is in effect, periodic reviews and evaluations of the tribe's performance of the energy resource development activities a tribe undertakes.

In addition, in conducting review of a tribe's TERA application, the Secretary will perform a National Environmental Policy Act (NEPA) review consistent with the scope of the tribe's proposed energy resource development in the TERA. The Secretary will also publish in the **Federal Register** a notice that the Secretary is considering a final proposed TERA and is requesting public comment.

In addition to the three issues identified in the consultation process discussed above, the Secretary identified several other main issues during the public comment period discussing: what is included as a physical trust asset and the exception of inherently Federal functions from responsibilities a tribe may assume under a TERA.

Physical Trust Asset—The regulatory definition of physical trust asset includes physical trust assets the United States owns in trust for a tribe or individual Indian or that a tribe or individual Indian owns subject to a restriction against alienation under the laws of the United States. The regulatory definition excludes improvements to the physical trust assets and monetary assets. A few commenters requested that the Secretary also exclude ''water'' from the definition of physical trust asset. The commenters suggested that water and water rights issues have a different legal basis under federal and tribal laws than do other natural resources and that it is not appropriate to include water as a physical trust asset. The Secretary relied on Section 3504(e)(6)(A)(i) of the Act that provides that the Secretary must ''act in accordance with the trust responsibility of the United States relating to mineral and other trust resources.''

In addition, the Secretary included the definition of physical trust asset because of the imminent jeopardy to a physical trust asset regulatory provisions the Act mandates. The Secretary asserts that the inclusion of water as a physical trust asset is necessary to ensure that any water supply to or body of water that exists on tribal land is protected from imminent jeopardy because of a tribe's non-compliance with a TERA or a third party's breach or violation of a lease, business agreement, or right-of-way under a TERA or violation of applicable tribal or Federal environmental laws. Imminent jeopardy means ''an immediate threat of devaluation, degradation, damage, or loss of a physical trust asset, as determined by the Secretary'' (§ 224.30, *Definitions*). A tribe's energy resource development on tribal land may affect physical trust assets, including water resources on its land, adjacent Indian allotted land, or on another tribe's land. Devaluation, degradation, or damage to, or loss of, any natural resource, including water, because of a breach or violation of a term of a lease, business agreement, or right-of-way under a TERA, or violation of applicable environmental laws, are equally potentially environmentally or financially devastating. The Secretary is required under the Act to provide for taking actions necessary to protect the asset if the Secretary determines that a non-compliance with a TERA or applicable Federal or tribal environmental laws causes imminent jeopardy to a physical trust asset or if the interest of an interested party, as defined in the regulations, has sustained or will sustain an adverse environmental impact due to a tribe's non-compliance with an approved TERA. The Secretary must therefore include water, as a natural resource and a trust resource, as a trust asset in the definition of physical trust asset.

Inherently Federal Functions—In keeping with the intention of the Act and the Secretary's intention to further tribes' opportunities to manage their own energy resource development on tribal lands, the regulations provide that tribes, at their discretion, may review

and approve leases, business agreements, and rights-of-way associated with energy resource development on tribal lands to tribes under approved TERAs. In addition to the review and approval authority the Secretary would ordinarily perform, the Act and the regulations require that tribes provide for carrying out specific activities the Secretary would ordinarily perform. The regulations include required provisions for a tribe's establishing and carrying out an environmental review process, ensuring environmental compliance in tribal approval of leases, business agreements, and rights-of-way, and public participation in environmental review of the effects that tribal approval of leases, business agreements, and rights-of-way will have.

However, Congress also provided in the Act, and the regulations state, that the United States is not absolved of any responsibility to Indians or Indian tribes, including those derived from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive Orders, or agreements between the United States and any Indian tribe. In addition, under the Act and the regulations, the Secretary must act in accordance with the trust responsibility of the United States relating to mineral and other trust resources and act in good faith and in the best interest of Indian tribes. In addition, the Act and the regulations provide that the Secretary must continue to fulfill the trust obligation of the United States to ensure that the rights and interests of an Indian tribe are protected ''if any other party to a lease, business agreement, or right-of-way violates any applicable Federal law or the terms of any lease, business agreement, or right-of-way a tribe enters into under an approved TERA or any provision in a lease, business agreement, or right-of-way violates the TERA under which the lease, business agreement, or right-of-way was executed.'' Tribes with approved TERAs must report any violation or breach of terms of a lease, business agreement, or right-of-way or a Federal or tribal environmental law to the Secretary. The Secretary must determine that a tribe has the capacity to carry out the authority and the activities it proposes to assume under a TERA before approving a TERA. Under an approved TERA, the Secretary must conduct periodic review and evaluations of a tribe's activities. In addition, the regulations, following the requirements of the Act, provide that in a TERA a tribe must authorize the Secretary to take any actions the Secretary determines are necessary to enable the Secretary to carry out the trust responsibility upon the Secretary's finding of imminent jeopardy to a physical trust asset.

The final regulations provide that tribes may assume activities beyond those specified in the Act. Wherever possible within the requirements of the Act and wherever tribal assumption of activities would not conflict with inherently Federal functions, the Secretary provided for as much flexibility as possible for participating tribes in providing for tribal procedures and assumption of activities for energy resource development under the regulations. Congress did not expressly prohibit the use of the term ''Inherently Federal Functions,'' and left this issue open to the Secretary when it outlined the Secretary's trust responsibility in the Act (25 U.S.C. 3504(e)(6)). Therefore, the regulations at § 224.52(c) state that a tribe may include in a TERA the ''assumption by the tribe of certain activities normally carried out by the Secretary, except for inherently Federal functions.'' The regulations further provide, at § 224.53(e)(3), that ''the tribe's intended scope of administrative activities [in a TERA] may not include the responsibilities of the Federal government under the Endangered Species Act or any other inherently Federal functions.'' Under regulations for Indian self-determination, self-governance, surface leasing and grazing, and Indian Reservation Roads, for example, the Secretary has also reserved responsibility for inherently Federal functions, which a tribe may not assume. While a few commenters requested that, the Secretary define ''inherently Federal functions,'' the Secretary declined to do so. Under the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended, the Secretary determines inherently Federal functions on a case-by-case basis.

In the final regulations at § 224.58, the regulations provide that in an application consultation meeting with the tribe the Director will identify specific services, consistent with the Secretary's ongoing trust responsibility and available resources, that the Department will provide to the tribe upon approval of a TERA. The Director will also discuss with the tribe the activities the tribe proposes to assume under a TERA. It is the Secretary's policy to make available to a tribe under an approved TERA all administrative functions that may be lawfully contracted under the ISDEAA, as amended, and the Federal Oil and Gas Royalty Management Act. It is the Secretary's intention to interpret and implement this part as stated in § 224.20.

In the final regulations, the Secretary substituted the term ''activities'' for ''authority'' and ''responsibility'' where ''authority'' and ''responsibility'' were used interchangeably in the proposed regulations for activities a tribe requests to assume in a TERA. In the proposed regulations, the terms ''authority'' and ''responsibility'' were also used in a manner in which they conceptually overlapped. In order to clarify meanings and distinguish what authority a tribe obtains and what other activities a tribe may assume under an approved TERA, the Secretary determined that the term ''responsibility'' relates to an inherently Federal function for which the Secretary must retain final decision-making. The term ''authority'' is properly used in connection with a tribe's review and approval of leases, business agreements, and rights-of-way to denote the effect of an approved TERA. Under an approved TERA, the Secretary is granting authority to a tribe to review and approve these instruments without Secretarial approval. Therefore, the Secretary has maintained use of the term ''authority'' when it applies to the Secretary's grant to a tribe under an approved TERA. The Secretary has replaced the term ''authority'' or ''responsibility'' with ''activity'' or ''activities'' when referencing what a tribe may assume from the Secretary, in addition to review and approval authority for leases, business agreements, and rights-of-way, under an approved TERA.

In addition to the issues discussed above, in several instances the Secretary found that clarification under the requirements of the Act were necessary, as discussed below.

Miscellaneous Provisions—In order to meet the Secretary's commitment to develop implementing regulations that conform to the requirements of the Act, where the Secretary found provisions in the regulations that incompletely reflected specific provisions of the Act, the Secretary revised them to accurately reflect the requirements of the Act. In addition, the Secretary included the following items in the final regulations after review and consideration.

Recordkeeping Requirements—Based on the Act's requirements, the Secretary carefully reviewed provisions for items required for inclusion in a TERA under § 224.63. The Secretary added §§ 224.63(k) and 224.56(l) to subpart B, requiring that tribes include provisions for recordkeeping in TERAs. Under these sections, tribes must create,

maintain and preserve records concerning the activities and leases, business agreements, and rights-of-way it enters into under a TERA. The Secretary must have available at periodic reviews and evaluations sufficient documentation to allow for meaningful review and evaluation of a tribe's energy development activities under a TERA. In addition, in the event a tribe voluntarily rescinds a TERA or the Secretary reassumes a TERA, the Secretary must ensure that the tribe has appropriate records to provide to the Secretary to allow the Secretary to carry out the activities the tribe assumed; ensure compliance with the leases, business agreements, or rights-of-way the tribe has entered into with third parties; protect physical trust assets; and discharge the United States' trust responsibility. Addition of this recordkeeping provision is not a substantive change since the Act and § 224.32(e) provide that under a TERA the tribe must provide the Director with ''records and documents relevant to the provisions of an agreement.'' In addition, the Act and the final regulations provide that upon a tribe's notifying the Secretary of a violation or breach, the Secretary may ''review relevant transactions and reports.''

Definition of Violation or Breach—Upon the review of the regulations, the Secretary determined that the definition of ''violation or breach'' in § 224.30 should follow the definition in the Act. Therefore, in order to complete the definition of ''violation or breach'' in § 224.30, the Secretary added ''other'' before ''violation'' and added ''by another party'' after ''violation.'' The Secretary also added ''any provision in'' before ''lease'' and added, ''under a TERA or any activity or occurrence under a lease, business agreement or right-of-way that constitutes a violation of'' before ''Federal or tribal environmental law.''

Provision for Hearing on Determination of Non-Compliance With TERA—The proposed regulations did not include a provision for a hearing for a tribe upon the Director's determination that the tribe is not in compliance with the terms of its approved TERA. The Secretary added a provision for a hearing for a tribe to § 224.121 at (a), along with a provision granting a tribe a reasonable opportunity to comply with the TERA. The provision was inadvertently left out of the proposed regulations. The Secretary wanted to acknowledge that a tribe has due process rights in this section.

II. Discussion of Final Rule

The final regulations include the specific regulatory provisions the Act required for TERAs: (1) Criteria for determining that a tribe has sufficient capacity to regulate the development of its energy resources; (2) a scope of, and procedures for, Secretarial review and evaluation of tribal action under a TERA, including provisions for review of transactions, reports and site inspections, and any other review processes the Secretary deems appropriate; (3) provisions for final agency actions after exhaustion of administrative appeals of Secretarial decisions regarding interested party petitions; and (4) a process and requirements for a tribe's voluntarily rescinding a TERA and returning to the Secretary the review and approval authority for future leases, business agreements and rights-of-way for energy resource development. The regulations also provide for a tribal application process for a TERA, tribal consultation throughout the pre-application and application processes, and a process for Secretarial review and approval of TERAs. The regulations require that the Secretary provide notice of, and an opportunity for public comment on, a final proposed TERA. In addition, the regulations require that a TERA include provisions that cover tribal environmental compliance measures and a process for review of any potential environmental impacts to areas affected by activities that the tribe could approve under the TERA. Further, the final regulations provide processes for tribes and the Secretary to take any action necessary to protect physical trust assets if activities undertaken under an approved TERA cause imminent jeopardy to a physical trust asset. The regulations also require that the Secretary take any action necessary upon a third-party lessee's non-compliance with a lease or agreement or right-of-way or a violation of a Federal or tribal environmental law results in imminent jeopardy to a physical trust asset.

Because an approved TERA is the decisional and operational document governing tribal authority to approve leases and business agreements on, and to grant rights-of-way, over tribal land, the Act requires that specific provisions be included in a TERA. In addition to requiring that a tribe provide information regarding its capacity to assume certain duties, a TERA, pursuant to the Act, also sets forth detailed provisions a tribe must include in a lease, business agreement, or grant of right-of-way to ensure environmental compliance, including reporting violations and breaches of leases, business agreements, and rights-of-way and violations of Federal and tribal environmental laws to the Secretary. TERAs must also specify that the Secretary will conduct periodic reviews and evaluations of a tribe's performance under a TERA. During the application consultation, the Director and the tribe will develop a periodic review and evaluation process that addresses the tribe's specific circumstances and the tribe will include the process in its final TERA. The regulations also provide that a tribe may voluntarily rescind its authority to the Secretary. Under the regulations, the Secretary may reassume all of a tribe's activities under a TERA under very specific circumstances. Consequently, the Secretary carefully reviewed provisions requiring items to be included in a TERA. The Secretary added §§ 224.63(k) and 224.63(l) to subpart B, to provide that tribes include a provision for recordkeeping in each TERA. Under this section, tribes must create, maintain and preserve records concerning the leases, business agreements, and rights-of-way it enters into under a TERA. The Secretary must have available at periodic reviews and evaluations sufficient documentation to allow for meaningful review and evaluation of a tribe's energy development activities under a TERA. In addition, in the event a tribe voluntarily rescinds a TERA or the Secretary reassumes a TERA, the Secretary must ensure that the tribe has appropriate records to allow the Secretary to carry out the activities; protect physical trust assets; and discharge the United States' trust responsibility. The Secretary does not consider the addition of this section to be a substantive change, since § 224.32(e) already requires that the tribe provide the Director with ''records and documents relevant to the provisions of an agreement.''

III. Discussion of Comments on Proposed Regulations and Responses

The Secretary received input from 20 commenters on the proposed regulations published in the **Federal Register** on August 21, 2006 (71 FR 48626). Tribes, private companies, tribal organizations, non-governmental associations, a Federal government agency, and individuals provided written comments. A number of comments indicated that commenters were not familiar with provisions of the Act from which we developed the regulations. In responses to comments, the Secretary indicated where the Act required specific provisions in the

regulations. Public comments and the Secretary's responses are arranged first by general comments and then by comments to subpart and/or section. We have included responses only to substantive comments. Where commenters suggested minor editorial revisions such as changes in grammar or minor word changes that we accepted, we have made such changes to the regulations, but have not included these comments in the responses that follow. In addition, in final review of these regulations, we identified minor editorial revisions and provisions that required edits, either to clarify a section or to provide for agreement between the regulations and the Act. We made those changes. In a few instances, we identified items that we wanted to add to sections either to clarify the section or to provide for agreement between the regulations and the Act. We also made those changes. We did not make substantive changes in any of these instances, and have provided a discussion of them in this document.

Subpart A—General Provisions

Section 224.20 How will the Secretary interpret and implement this Part and the Act?

Several commenters requested that the Department impose specific timeline requirements on tribes for energy development activities that they manage under a TERA or mandate that tribes develop processes that parallel state and federal practices. In fulfilling the requirement to write implementing regulations for Title V—Indian Energy of the Act, we have imposed specific requirements where appropriate or mandated by the Act. In other places, we have allowed as much flexibility as possible to participating tribes in accordance with the mission of the Department to advance the objectives of the Indian Self-Determination and Education Assistance Act, as amended, and in recognition of tribal sovereignty. The regulations in § 224.20 incorporate the Department's attempt to balance requirements of the Act and the flexibility tribes need to facilitate economic development.

Section 224.30 What definitions apply to this Part?

There were several comments concerning definitions. Several commenters said that the use of the term ''agreement'' throughout the regulations, when referring to a Tribal Energy Resource Agreement (TERA), was confusing and could lead to misinterpretation of the regulations. We agree with these commenters, and throughout the final rule, we replaced the term ''agreement'' with ''TERA,'' where appropriate, and added a definition of TERA to § 224.30. In the Preamble of the proposed rule, the Secretary published an alternate definition of the term ''tribal land'' and sought comment on how the term ''tribal land'' should be defined. The Secretary received comments on both the proposed definition and the alternate definition of tribal land. The Secretary determined that the definition of tribal land at § 224.30, which follows the definition in the Act at 25 U.S.C. 3501(12), is the appropriate definition.

Some commenters suggested that the definition of ''Interested Party'' unfairly limits the interests of parties that could appeal actions taken under a TERA. The Secretary recognizes the limitation of the definition, but it follows the definition in the Act. In addition, there are other avenues for appeal of TERA approved actions in Subpart I Appeals. A few commenters suggested that the Secretary constrain the definition of Violation or Breach by inserting the word ''significant'' to indicate that only a violation or breach of a certain degree of seriousness would require Secretarial action. The definition the Secretary uses follows the definition in the Act. In addition, under the definition the Secretary has discretion to determine the seriousness of the violation or breach within the context of the approved TERA. Some commenters suggested excluding water from the definition of a ''Physical Trust Asset.'' The Secretary determined that the regulations must include a definition of ''Physical Trust Asset'' because the Secretary has a trust responsibility for natural resources and the Act mandates provisions dealing with a breach or violation that has caused or will cause ''imminent jeopardy to a physical trust asset.'' The Secretary determined that the inclusion of water as a physical trust asset is necessary to ensure that any water supply or body of water that exists on tribal land has protection from imminent jeopardy because of the action or inaction of a tribe or a third party under a TERA.

Section 224.40 How does the Act or a TERA affect the Secretary's trust responsibility?

One commenter asked that the regulations reflect the Secretary's ongoing accountability for stewardship of energy and other subsurface resources. Another commenter requested that the Secretary state the specific requirements of the trust responsibility. We note that the proposed regulations in § 224.40 states that the Secretary continues to maintain trust responsibilities (as defined by statutes and regulations under *U.S.* v. *Mitchell*, 463 U.S. 206 (1983) and its progeny) and that the regulatory language is consistent with the Act at 25 U.S.C. Section 3504(e)(6)(B). One commenter objected to § 224.40(d), which relieves the Secretary of liability for any losses resulting from a business agreement, lease, or right-of-way granted under a TERA, and claims that this provision is inconsistent with the Secretary's obligation to intervene where imminent jeopardy to a physical trust asset occurs under a business agreement, lease, or grant of right-of-way. However, this provision is entirely consistent with the language of the Act which states that the Secretary '' shall not be liable to any party (including any Indian tribe) for any negotiated term of, or loss resulting from the negotiated terms for, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement approved by the Secretary.'' The Secretary believes that the regulations outlined in Subpart E are sufficient to protect physical trust assets from imminent jeopardy conditions. Another commenter asked what form a TERA would take. The language of the Act and the regulations provide that an approved TERA is the Secretary's grant of authority to a tribe to approve leases, business agreements, or rights-of-way for specific energy development activities on tribal lands. The Secretary conditions this grant of authority on the Secretary's periodic review and evaluation of the tribe's compliance with the terms of the TERA and these regulations as mandated by Title V, Section 503 of the Energy Policy Act of 2005. The final regulations contain provisions under which the Secretary may reassume the authority granted to the tribe under a TERA. One commenter expressed concern that in the case of jointly held tribal land that § 224.41 should specifically refer to ''tribal minerals.'' However, the definition of tribal land in § 224.30 includes ''land or interests'' owned by a ''tribe or tribes'' and therefore jointly held mineral interests are covered in the final regulations.

Subpart B—Procedures for Obtaining Tribal Energy Resource Agreements

A commenter expressed concern that the Secretary would not fully consult with tribes on the range of opportunities available to determine the scope of energy development and regulatory authority that they may want to assume under a TERA. The commenter suggested that the Secretary apprise

tribes of financial resources available to help them develop the expertise and capacity to develop their energy resources. In response, the Secretary notes that the regulations under Subparts B and C require the Secretary to conduct a thorough consultation process with a tribe applying for a TERA that will lead to a comprehensive review of the capacity of a tribe to conduct the activities that are the subject of a TERA. In addition, under Subpart F, the Secretary will conduct periodic review and evaluation of the tribe's compliance with a TERA to identify any inadequacy in the tribe's capacity to perform under the requirements of its approved TERA. If the Secretary identifies any inadequacies in the tribe's capacity to implement the provisions of the TERA, the Secretary will communicate those concerns and incorporate those findings in a decision to allow the tribe's activities to continue or to reassume the authority granted to the tribe in the TERA. Finally, in § 224.63(h), the regulations require that the TERA identify the financial assistance, if any, that the Secretary has agreed to provide to the tribe to assist in the implementation of the TERA, including the tribe's environmental review of individual energy development activities. In addition, § 224.89 of the regulations requires that the Secretary and the tribe consult regarding the extent of Secretarial assistance, if any, to enforce leases, business agreements or rights-of-way entered into under a TERA.

Some commenters noted that the regulations should retain the greatest flexibility possible to allow tribes to acquire the appropriate level of involvement with a TERA.

The Secretary recognizes the need for ongoing consultation with tribes during the process of approval and implementation of a TERA. The regulations include a pre-application consultation process at Subpart B, §§ 224.51–53. In addition, §§ 224.58–62 outline the consultation process that begins with receipt of a tribe's formal application for a TERA. Finally, at many points throughout the TERA review, approval, and monitoring process the Secretary will consult with the tribe when making decisions about the tribe's TERA. Throughout the consultation processes and implementation of TERAs, the Secretary will strive to include officials at the local level as well as officials that deal with Indian affairs in other bureaus within the Department, relevant Federal agencies outside the Department, and the Department's advisory committee in discussions with the tribe.

Section 224.52 What may a tribe include in a TERA?

In § 224.52(c), the Secretary states that a tribe may assume under a TERA ''* * * certain activities normally carried out by the Secretary, except for inherently Federal functions.'' Several commenters objected to the exclusion of inherently Federal functions from a TERA. These commenters either wanted the exclusion deleted or expanded into a definition. In response, the Secretary notes that Congress did not expressly prohibit the use of the term ''Inherently Federal Function,'' and left this issue up to the Secretary's discretion when it outlined the Secretary's trust responsibility in the Act (25 U.S.C. Section 33504(e)(6)(A) and (B)). The Secretary therefore determined that exclusion of inherently Federal functions from a TERA is consistent with the Act and other legislation, specifically the Indian Self Determination and Education Assistance Act, as amended. Furthermore, the pre- and post-application consultation process between tribes and the Department outlined in the regulations should enable the tribes and the Department to reach an agreement as to what activities a tribe can assume under a TERA.

Section 224.53 What must an application for a TERA contain?

This section describes the various elements that a TERA application must contain. One commenter said that the provision in § 224.53 went beyond the provisions of the Act. However, the Secretary determined that the regulations are fully consistent with the Act's stated purpose of assisting Indian tribes in the development of their energy resources and furthering the goal of Indian self-determination. Furthermore, the specific provisions of the Act that are codified at 25 U.S.C. 3504(e)(2)(B)(i) provide that the Secretary shall approve a TERA if the Secretary determines that the Indian tribe has demonstrated sufficient capacity to regulate the development of its energy resources. At the tribe's discretion, the tribe may include the full range of development activities in its TERA application which the Secretary must approve or disapprove.

Several commenters requested that the regulations provide an ''opt out'' clause for tribes so that tribes may choose to pursue agreements outside the TERA process. The Secretary notes that a tribe is not required to enter into a TERA to pursue energy development activity. In fact, the Act and the regulations provide that it is a tribe's discretion whether to enter into a TERA. When applying for a TERA, a tribe may preserve the option to use the provisions of the Indian Mineral Development Act, or other existing authorities, to pursue energy development on tribal land by complying with the requirements in § 224.53(c)(1) and (2).

Some commenters seek to insert language to clarify that after a TERA goes into effect, tribes may amend existing leases, business agreements, and rights-of-way and exercise TERA regulatory authority under a TERA with respect to the existing agreements to promote efficient administration of energy resource development projects on tribal land. The Secretary agrees with the commenters and has added clauses (c)(3) and (e)(3) to § 224.53 to allow a tribe to state its intent to amend or modify (with the agreement of relevant third parties) leases, business agreements, and rights-of-way that exist when a TERA is approved, if those activities are directly related to the activities authorized by the TERA.

Section 224.55 Is information a tribe submits throughout the TERA process under this Part subject to disclosure to third parties?

Although this section states that a tribe may identify information it determines is confidential and proprietary, one commenter requested that the regulations outline the process the Secretary will use if it receives a Freedom of Information Act (FOIA) request concerning a TERA. The Secretary does not think it is necessary to outline the procedures in these regulations, because we will follow the procedures found at 43 CFR Part 2. This commenter also requested the addition of language to the regulations that would require that the Secretary consult with the tribe before responding to a FOIA request. The Department will comply with applicable sections of both FOIA (5 U.S.C. 552) and the Departmental regulations (43 CFR Part 2) in responding to FOIA requests for tribal information submitted in pre-application and application processes.

Section 224.59 How will the Director use the results of the application consultation meeting?

One commenter noted that this section does not sufficiently describe the factors the Secretary will consider based on the information from the application consultation meeting. In response, the Secretary revised the section so that it refers to the specific

sections in which the regulations describe the evaluation process.

Section 224.62 May a final proposed TERA differ from the original proposed TERA?

A commenter requested that time limits on the review process for a TERA change only with the consent of the affected tribe when changes are made between the original proposed TERA proposal and the final proposed TERA. We agree with this request and modified the language in § 224.62(b) to indicate that tribal consent is required.

Section 224.63 What provisions must a TERA contain?

Several commenters questioned the environmental review provisions in § 224.63(c). One commenter said that the regulations did not set a ''real standard'' for what would constitute an ''appropriate'' environmental evaluation for activities proposed under a TERA. Other commenters noted that the provisions are more stringent than what is required under the National Environmental Policy Act (NEPA). In response, the Secretary agrees that the provisions in § 224.63(c) go beyond the requirements of NEPA. However, this language is consistent with the requirements of the Act at 25 U.S.C. 3504(e)(2)(C)(i)–(ii). With respect to environmental review, we agree that it is the Secretary's responsibility to ensure that the environmental review process that the tribe proposes as part of the TERA is sufficient to ensure that the tribe identifies, evaluates, and mitigates foreseeable impacts during energy resource development. The Secretary will address the process and procedures to use in this evaluation, guided by the specifics of each tribe's TERA proposal as we implement these regulations.

Another commenter requested that the Secretary require that all tribes use the same royalty accounting methodology. However, in fulfilling the requirement to write implementing regulations for Title V—Indian Energy of the Act, also called the Indian Tribal Energy and Self-Determination Act of 2005, the Secretary has imposed specific requirements where appropriate or mandated by the Act. In other sections, the Secretary has allowed as much flexibility as possible to participating tribes in accordance with the mission of the Department to advance the objectives of the Indian Self-Determination and Education Assistance Act, as amended, and in recognition of tribal sovereignty.

One commenter noted that it is important to provide that the option for a lease, business agreement, or right-of-way may have retroactive application from the date it becomes effective because parties in commercial transactions often fix the operative date of a transaction as the date upon which an agreement was reached. The Act provides that a lease, business agreement, or right-of-way becomes effective when a tribe executes it and mails it to the Secretary. Therefore, in these regulations the Secretary agrees that commercial considerations may necessitate a retroactive applicability date for a lease, business agreement or right-of-way. We modified § 224.63(c)(14) to allow for a lease, business agreement, or right-of-way to become applicable retroactively by agreement of the tribe and other parties, under certain conditions.

Another commenter noted that in the proposed regulations we used the word ''reassume'' in § 224.63(c)(13), but the Act uses the word ''suspend.'' We have made the word change to make the regulations consistent with the Act. The same commenter also suggested re-designation for clauses (c)(15) to (c)(21). We agree with the suggestions, in part, and have changed § 224.63(c)(15) to § 224.63(d) and have similarly re-designated the clauses that follow from § 224.63(c)(16) to (21) to § 224.63(e) to (j).

Section 224.67 What must the Secretary do upon the Director's receipt of a final proposed TERA?

One commenter said that it was not clear if the public notification of a TERA application would also provide access to the proposed TERA, and suggested that the public should have sufficient time to review any proposed TERA. We note that the regulations clearly state at § 224.67(a) that the **Federal Register** notice shall advise the public on how to request and receive copies of the final proposed TERA from the Secretary. Since this is a NEPA process (40 CFR 1502.25(a)), the Department will follow the longstanding procedures of the Federal government outlined in its NEPA public notice procedures to allow the public sufficient time to review the proposed TERAs.

Subpart C—Approval of Tribal Energy Resource Agreements

Section 224.70 Will the Secretary conduct a review of a final proposed TERA under the National Environmental Policy Act (NEPA)?

Several commenters asked that we insert clarifying language in § 224.70 that the Secretary's NEPA review is triggered by a tribe's submittal of a TERA for review and approval, but that such review does not extend to subsequent leases, business agreements, or grants or rights-of-way that a tribe may enter into with third parties pursuant to an approved TERA. The Secretary agrees that this is the intent of the Act and we have added language to § 224.70 of the regulations to make this clear.

One commenter stated that the relationship between these regulations, NEPA, and other Federal laws was unclear. The Secretary believes that the language in the proposed regulations at § 224.70 is consistent with the NEPA public notice and public comment requirements at 40 CFR 1503 and 1506. Furthermore, the Secretary will comply with all applicable Federal laws in the TERA review and approval process. In addition, one commenter noted that some projects might not be viable unless a tribe can opt out of the environmental review process required to be included in the TERA. We note that the proposed regulations already addressed this issue at § 224.53(c)(1), which we have retained in the final regulations. This provision of the regulations provides a tribe an opportunity to identify resources on tribal land or parts of tribal land that the tribe does not want to include in the proposed TERA.

Section 224.72 How will the Secretary determine whether a tribe has demonstrated sufficient capacity?

One commenter objects to the Secretary approving a TERA because other provisions in the Act that would build tribal capacity have not been put in place. Until these provisions have been implemented for a considerable time, according to the commenter, all tribes should be prevented from taking advantage of the TERA program. In response, the Secretary states that, in fulfilling the Act's requirement to develop implementing regulations for Title V—Indian Energy of the Act, also called the Indian Tribal Energy and Self-Determination Act of 2005, we have imposed specific requirements where appropriate or mandated by the Act. In other places, we have allowed participating tribes as much flexibility as possible in accordance with the mission of the Department to advance the objectives of the Indian Self-Determination and Education Assistance Act, as amended, and in recognition of tribal sovereignty.

In addition, given the varying experiences of tribes with managing their energy resources, the Secretary cannot ignore the intent and will of Congress in the Act, which is to provide tribes with an additional tool to enhance their financial sovereignty while

requiring a thorough evaluation of the tribe's capacity to develop its own resources. The Secretary will diligently carry out the regulations' requirement that the Secretary evaluate a tribe's technical, financial, and administrative capacity in full consultation with the tribe and in response to individual proposed TERAs. A couple of commenters indicated that the language in this section should make it clear that the Secretary's determination of tribal capacity to manage energy development under a TERA is limited to the administrative and regulatory activities the tribe seeks to assume from the Secretary, and not specific projects that a tribe may seek to develop under a TERA. In response, we have made changes consistent with these comments. Finally, one commenter objected to a provision in § 224.72(i) that allows the Secretary, in evaluating tribal capacity to assume energy development regulatory authority, to determine ''any other relevant factors'' for consideration. In response to this comment, the Secretary notes that the Act specifically provides this discretion to the Secretary.

Section 224.73 How will the scope of energy resource development proposed in a tribe's TERA affect the Secretary's determination of the tribe's capacity?

One commenter stated that the language in this section again suggests that a TERA will include a description of each energy resource development subject to a TERA and that tribes will have to go through multiple capacity determinations as each proposed development project arises under a TERA. We agree that this is not the intent of the Act. We have revised the language in this section to indicate that the Secretary's capacity determination will include a determination as to each type of energy resource development subject to the TERA which the tribe seeks to regulate and each type of administrative or regulatory activity the tribe proposes to assume. Furthermore, the section now makes it clear that the Secretary's review of a TERA is limited to activities specified by its provisions. Another commenter requested that we change the word ''manage'' in § 224.73 to ''monitor,'' stating that this would be consistent with language in § 224.71(b). The Secretary believes that the word ''manage'' is consistent with intent of the Act, and, in response, has made a change in §§ 224.71(b) and 224.72 to refer to tribe's intent to ''manage'' regulatory activities under a TERA.

Section 224.75 What must the Secretary do upon approval or disapproval of a final proposed TERA?

In this section, a commenter objected to the inclusion of the terms ''if any'' in reference to revisions in § 224.75(b)(2). The commenter stated that addition of ''if any'' contradicts the language and one of the purposes of the Act, which is to ''provide the Indian Tribe with an opportunity to revise and resubmit the tribal energy resource agreement.'' Under the Act, if the Secretary disapproves of the submitted TERA, the Secretary is required to state the ''changes or other actions'' a tribe is required to submit to address the Secretary's concerns. Therefore, the commenter recommends that we delete the phrase ''if any.'' The Secretary agrees with this comment, and we have made the suggested change. Another commenter suggested that in § 224.75(c), where there is a reference to complying with FOIA, that the regulations refer to the disclosure procedures in § 224.55. The Secretary agrees that this proposed change would clarify the regulations and has eliminated the references to FOIA in § 224.75(c).

Subpart D—Implementation of Tribal Energy Resource Agreements

Section 224.82 What activities will the Department continue to perform after approval of a TERA?

A commenter said that § 224.82(e) is ambiguous and needs clarification. The commenter specifically requested that the reference to Department ''activities'' should be changed to ''services.'' The commenter also stated that the phrase ''does not affect'' is unclear. We agree with the comments about the ''does not affect'' language and have revised this section. For the purposes of consistency with other provisions of the regulations, we are not changing ''activities'' to ''services.'' Another commenter sought the addition of a subsection that would state that the Department would provide ''access to leases, agreements, rights-of-way, and other contracts entered into between the tribe and any third party.'' The Secretary believes the existing language in § 224.82(a) and (e) has the same effect as proposed by this commenter. In addition, we note that when a tribe enters into a TERA, the Department's existing responsibilities to provide information or services to the tribe remains unchanged.

Section 224.84 When may a tribe grant a right-of-way?

One commenter said that this section contained too many limitations on a tribe's ability to grant a right-of-way. The Secretary notes that the limitations in the regulations regarding rights-of-way are fully consistent with the Act. Another commenter suggested that the authority for ''* * * renewals of leases and rights of ways and other rights under the current TERA regulations should be included and be clear and flexible enough to allow a project to retain its lease or other rights as long as a project is being depreciated.'' The Secretary agrees with this comment. In response, we added a § 224.86(d) that states that when a tribe enters into a lease or business agreement or grants a right-of-way, at its discretion, this tribe may renew the lease, business agreement, or right-of-way as long as the TERA remains in effect and as long as the tribe still has the authority to approve leases and business agreements, and grant rights-of-way under the TERA.

Section 224.85 When may a tribe enter into a lease or business agreement?

A couple of commenters said that § 224.85 is too narrow in its limitation of energy resource development activities and it could be interpreted to preclude tribes from entering into agreements for processing minerals or other activities which include non-tribal sources of production. These commenters suggested that the Secretary delete this section of the regulations or modify it to indicate that a tribe may enter into a lease or business agreement for the purpose of energy resource development on ''or affecting'' tribal land. In response, the Secretary notes that the Act limits energy resource development projects to those that develop resources on tribal land as defined in § 224.30 and so has not made the requested change.

Section 224.86 Are there limits on the duration of leases, business agreements, and rights-of-way?

One commenter noted that no mention was made of how to deal with renewals of leases, business agreements, and rights-of-way under a TERA. As noted before, the Secretary agrees with this comment and in response has added a § 224.86(d) that states that when a tribe enters into a lease or business agreement or grants a right-of-way, it may be renewed at the discretion of the tribe as long as the TERA remains in effect and as long as the tribe still has the authority to approve leases, business agreements, or rights-of-way under the TERA.

Another commenter requested that we change the phrase ''in terms'' to ''on the duration'' to clearly indicate that this section deals with the temporal existence of leases, business agreements,

and rights-of-way under a TERA and not the legal ''terms'' and conditions. The Secretary agrees with this comment and has made the requested change.

Section 224.87 What are the obligations of a tribe if it discovers a violation or breach?

A commenter suggested we clarify this section to state that Secretarial responsibilities also apply to third-party violators and that § 224.89 should be cross-referenced in these other sections to better clarify the delineation of actions by the Secretary. In response to this comment we have made specific reference to third party actions in § 224.87 and in the § 224.30 definition of imminent jeopardy.

Subpart E—Interested Party Petitions

Section 224.100 May a person or entity ask the Secretary to review a tribe's compliance with a TERA?

One commenter suggested that we delete this section because it creates a conflict of interest for the Secretary in its requirement that the Secretary act as an arbiter of a dispute between a tribe and a third party petitioner. The commenter stated that this would be a clear violation of the Secretary's trust responsibilities. Another commenter suggested that this Subpart implies that a tribe waives its sovereign immunity when it enters into a TERA. The Secretary notes that the language in Subpart E regarding the rights of a third party petitioner is identical to language in the Act codified at 25 U.S.C. 3504(e)(7)(A) and (B). The Act expressly provides that any person or entity, who is an interested party, as defined in the Act, may file a petition alleging that a tribe is not complying with a TERA. The Act also provides that an interested party must first exhaust tribal remedies if the tribe has enacted laws, regulations, or procedures providing tribal remedies. There is no waiver of sovereign immunity implied or intended in the Act or these regulations.

Section 224.101 Who is an interested party?

Several commenters objected to this regulatory provision as too broad, and permitting ''anyone who claims a hypothetical or other form of inadequate 'interest' to participate as an 'interested party' '' or that ''* * * such a loose standard may create a cause of action where no actual standing exists.'' One commenter requested that we define ''Interested Party'' in § 224.101 as a person or entity ''that has demonstrated that a legally cognizable interest of the person or entity in property or a resource has sustained, or will sustain, an adverse environmental impact because of a tribe's failure to comply with an agreement.'' The commenter notes that this suggested definition is consistent with the Department's existing administrative appeal practice at 43 CFR 4.410(d) (requiring a legally cognizable interest). In response, the Secretary notes that Congress defined this term in the Act as codified at 25 U.S.C. 3504(e)(7)(A). In developing the regulations, the Secretary cannot limit the definition when the Act does not do so.

Section 224.106 If a tribe has enacted tribal laws, regulations, or procedures for challenging tribal action, how must the tribe respond to a petitioner's challenge?

One commenter noted that while under § 224.106(a) a tribe must respond within a ''reasonable'' time, the regulation should include a specified time period no longer than 30 days. In fulfilling the requirement to write implementing regulations for the Act, the Secretary has imposed specific requirements where appropriate or mandated by the Act. In other places, such as this section, the Secretary has allowed as much flexibility as possible to participating tribes in accordance with the mission of the Department to advance the objectives of the Indian Self Determination and Education Assistance Act, as amended, and in recognition of tribal sovereignty.

Section 224.107 What must a petitioner do before filing a petition with the Secretary?

One commenter stated that § 224.107(a) should explicitly require a petitioner to use ''any appeals or appellate court review'' allowed under the tribe's laws. The inclusion of such language would ensure that a petitioner must proceed through all available tribal remedies prior to filing a petition with the Secretary. We have added ''including any tribal appeal process'' to § 224.107. In addition, we note that § 224.109(c) requires a petitioner to include specific facts demonstrating that the petitioner has exhausted tribal remedies in the petition. Also, in § 224.113, a tribe may state whether the petitioner has exhausted tribal remedies in its response to a petition.

Another commenter said that this section lists as a prerequisite to filing a petition that a petitioner has participated in a tribal hearing or comment process regarding allegations of tribal non-compliance with its TERA. The commenter suggests that a petitioner should have participated in a tribal hearing or comment process regarding the tribe's proposed activity, if such a process was provided, in addition to exhaustion of tribal remedies, if any, for alleging non-compliance with a TERA. The Secretary believes that this would place an unfair burden on a petitioner to have known with foresight the full range of potential impacts and their magnitude prior to their implementation. The Secretary believes that the provision, as written, reflects the intent of Congress.

Section 224.110 When may a petitioner file a petition with the Secretary?

One commenter recommended that we shorten to 30 days the 45-day period for filing a petition that § 224.110(a) allows after receipt of the tribe's written decision on a petition, noting that Act did not specify a period for filing a petition for review and 30 days should be adequate for doing so. The Secretary agrees with the commenter and has made the change.

Section 224.115 When must the Director make a threshold determination about a petition?

A commenter objected to § 224.115(c), which allows the Director to reject the resolution mutually agreed upon by the tribe and the petitioning party. The commenter expressed the opinion that resolution of such disputes should be encouraged. The Act provides that ''[t]he Secretary [shall take certain steps to ensure compliance with a TERA] only if the Indian tribe fails, refuses, is unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the Secretary, after the expiration of the [consultation] period.'' 25 U.S.C. 3504(e)(7)(C)(iii)(II). The commenter understands the language ''as determined by the Secretary'' gives the Secretary the right to determine what is a reasonable period, not to reject a settlement that the tribe and petitioning party have reached. The commenter suggests changing ''may'' to ''will'' in line 7 of § 224.114 and deleting § 224.115(c). However, the Secretary believes that the existing language in this section is consistent with the intent of the Act, and fulfills the Department's residual trust responsibility as noted in the Act (25 U.S.C. 3504(e)(6)(A)(I) and (ii)) and Section 3504(e)(6)(B)) to consider the best interests of the tribe and the protection of trust resources in the Secretary's decision-making. Therefore, the Secretary declines to make the suggested change.

Section 224.117 When must the Director dismiss a petition after making a threshold determination about a petition?

A commenter suggested that § 224.117(b) include as a basis for dismissal that a petitioner's lack of participation in a tribal hearing or comment process regarding the tribe's proposed activity, as well as failing to exhaust tribal remedies, if any, for alleging non-compliance with a TERA. The Secretary determined in response to a comment for § 224.107 that participation in a tribal hearing or comment process regarding a tribe's proposed activity under a TERA as a prerequisite for filing a petition would place an unfair burden on a petitioner and declined to make the suggested change. The Secretary also declines to make the suggested changes to § 224.117(b) because such a change would be inconsistent with the requirements in § 224.107 and would impose more requirements on a petitioner than Congress intended.

Section 224.119 How must the Director proceed if the Director does not dismiss the petition based on a threshold determination?

A commenter suggested that, if a petition is not dismissed based on threshold determinations, the Secretary's action on a petition should be limited to that necessary to cure or otherwise resolve each claim of adverse environmental impact to the petitioner's interest. The Secretary disagrees with the comment by noting that the Act expressly provides that the basis for an interested party's petition is a claim of a tribe's noncompliance with a TERA (5 U.S.C. 3504(e)(7)(B)). In addition, the Secretary's required consultation with a tribe after receipt of an interested party's petition is about ''any noncompliance alleged in the petition'' (25 U.S.C. 3504(e)(7)(C)(i)(II)). Also, if a tribe ''denies, or fails to respond to, each claim made in the petition * * * or fails, refuses, or is unable to cure or otherwise resolve each claim made in the petition, * * * the Secretary shall determine whether the Indian tribe is not in compliance with the TERA.'' (25 U.S.C. 3504(e)(7)(C)(iii)(I) and (II) and (e)(7)(D)(I)).

While we have maintained the general petition process included in Subpart E of the proposed regulations, after further review we have modified sections of Subpart E that did not accurately reflect the provisions of the Act or that required clarification, as follows:

Under the statutory scheme, Congress is providing third parties who may be interested parties, as defined in the Act, the opportunity to request that the Secretary review a claim that a tribe is not complying with a TERA. However, before a person or entity that may be an interested party may file a petition with the Secretary, the person or entity must exhaust tribal remedies. Under § 224.105(a) we clarified that tribal laws, regulations, or procedures establish ''tribal remedies'' rather than ''a process for hearing and comments'' because under § 224.105(b) tribal remedies provide a person or entity the opportunity to file a petition with the tribe. We have added a new provision at § 224.107 to clarify that during the tribal remedy process a tribe may resolve the claims in a petition with the petitioner. The new provision does not provide for how a tribe may resolve the claims or require that the Director make any determination on the tribe's resolution during the tribal remedy process. Under the final regulations at § 224.106(c) a person or entity that files a petition becomes a petitioner. In § 224.111 we added as a provision under which a petitioner may file a petition with the Secretary that the tribe failed to provide a person or entity that may be an interested party with copies of applicable tribal laws within a reasonable time of a request.

In review of the proposed regulations, the Secretary finds that proposed § 224.112 inaccurately states that after a petition consultation with the Director, a tribe ''may'' respond to the petition. Consequently, § 224.112 is re-numbered to § 224.113 and we have changed ''may'' to ''must'' to reflect the Act's requirement in 25 U.S.C. 3504(e)(7)(C)(ii). The Secretary also finds that § 224.113 states that a tribe ''may or may not'' dispute the petitioner's allegations. Consequently, § 224.113 is re-numbered to § 224.114 and we have changed this provision to state that a tribe ''must respond to any claims made in the petition * * *'' to reflect the Act's requirement in 25 U.S.C. 3504(e)(7)(C)(ii). We have also added subsection (b) to state that a tribe ''must cure or otherwise resolve each claim of noncompliance made in the petition'' as required under 25 U.S.C. 3504(e)(7)(C)(iii).

In review of comments on proposed § 224.119 on threshold determinations, the Secretary finds that proposed § 224.119 does not accurately reflect when the Director makes a threshold determination or what the threshold determination should be. The Act requires the Secretary, upon receipt of a petition, to notify the tribe of the petition within 20 days of receipt and initiate consultation with the tribe. The Act requires the tribe, within 45 days of completion of the consultation, to respond to the claims in the petition. Following consultation, the tribe has the opportunity to deny or respond to the claims in the petition and then has the opportunity to resolve or otherwise cure the claims. The Act requires the Director to make certain threshold determinations on a petition following consultation with the tribe before proceeding to review a tribe's compliance with a TERA, not upon receipt of the petition (25 U.S.C. 3504(e)(7)(C)(iii) and (e)(7)(D)(I). The Act at (e)(7) (D)(I) requires that the Director investigate a tribe's compliance with a TERA within 120 days of receipt of a petition, only upon making a threshold determination under 25 U.S.C. 3504(e)(7)(c)(iii). The threshold determinations the Director must make are whether the tribe has denied or failed to respond to each claim made in the petition or whether the tribe has failed or refused or is unable to cure or otherwise resolve each claim made in the petition (25 U.S.C. 3504(e)(7)(C)(iii)(I) and (II)). The Director may not proceed with a review of the tribe's compliance with a TERA unless the Director determines that one of the threshold determinations is met (25 U.S.C. 3504(e)(7)(C)(iii)). It is only upon the Director's determination that one of the threshold determinations is met that the Director reviews the petition and the tribe's response, if any, makes a written determination on the tribe's compliance with a TERA, and offers the tribe an opportunity for a hearing and a reasonable opportunity to attain compliance (25 U.S.C. 3504(e)(7)(E)). The Director may not take action to ensure compliance with the TERA under 25 U.S.C. 3504(e)(7)(D)(iii) before complying with 25 U.S.C. 3504(e)(7)(E)(i)–(iii). Therefore, the Secretary has modified proposed § 224.112 through § 224.122 in final § 224.113 through § 224.120 to accurately reflect the provisions of the Act.

The Secretary has added a new provision in § 224.117 that the Director provide the tribe an opportunity for a hearing, as required by 25 U.S.C. 3504(e)(7)(C)(iii)). New provision § 224.118 requires that a tribe must respond in writing to the Director's opportunity for a hearing within 20 days and, if the tribe does not respond, the Director will proceed to a determination of whether the tribe is in compliance with the TERA. Requiring the tribe to respond to the opportunity for a hearing allows for a timely hearing if the tribe requests it and allows the Director to

make a determination on compliance under the petition without undue delay.

Subpart F—Periodic Reviews

Section 224.132 How does the Director conduct a periodic review and evaluation?

One commenter raised concern that a tribe's provision of records and documents in the TERA review and evaluation process raises confidentiality issues similar to those involved in the initial application process. They recommend that the Secretary add a provision concerning record and document confidentiality. The Secretary agrees with the concern expressed in the comment. Our change is to insert in § 224.132(e) that the tribe should identify any information in these submitted records and documents that is confidential and proprietary. Specific exemptions to disclosure under the Freedom of Information Act, or other statutory protections against disclosure, may apply and preclude disclosure of this information to third parties.

Section 224.140 What must the Secretary do if the tribe fails to respond to or does not comply with the Director's order?

Two commenters raised a concern that under this section the Secretary could make a decision to reassume all activities the tribe assumed under the agreement if the tribe does not comply or respond to the Director's order to cease conduct or take a specific action to correct a condition that caused imminent jeopardy to a physical trust asset. These commenters requested that flexibility be added to this requirement so that the Secretary could reassume either all or a part of the activities the tribe assumed under the TERA. The Secretary recognizes this concern, but notes that the Act at 25 U.S.C. 3504(e)(2)(D)(ii) does not provide the desired flexibility. The Act requires total reassumption where the Secretary determines there is imminent jeopardy to a physical trust asset and the tribe does not comply or respond to the Director's order to cease conduct or take a specific action to correct a condition that caused imminent jeopardy to a physical trust asset.

Subpart G—Reassumption

Section 224.151 When may the Secretary reassume activities?

One commenter in this section suggested that when the Secretary invokes reassumption procedures because of a tribe's actions or inaction, such reassumption should be limited to the specific activity (or inactivity) giving rise to the reassumption, and not to the TERA in its entirety. The commenter further suggests that, at the very least, the regulations should give the Secretary discretion to reassume only a specific activity. In the case of reassumption in this section, the Secretary notes that the intent of the existing language of the regulations is consistent with the Act at 25 U.S.C. 3504(e)(2)(D)(ii) where there is imminent jeopardy to a physical trust asset. The language of the Act at 25 U.S.C. 3504(e)(7)(D)(iii)(II) refers to a condition of non-compliance with the conditions of the TERA that do not rise to the level of imminent jeopardy and gives the Secretary discretion to rescind all or part of a TERA. However, if the Secretary makes a decision to rescind all provisions of the TERA based on a finding of imminent jeopardy to a physical trust asset, then the Secretary must reassume all of the activities and authority under the TERA.

Another commenter requests the insertion of language in this section that states reassumption is ''based on a tribal violation of an agreement or applicable Federal law.'' The purpose of this change would be to clarify the underlying legal basis required for the Secretary's reassumption. However, the Secretary believes that the regulations already adequately deal with this issue and declines to make this addition.

Section 224.152 Must the Secretary always reassume the activities upon a finding of imminent jeopardy to a physical trust asset?

A commenter recommends that the text of this section should correspond to the question and should address situations involving imminent jeopardy to a physical trust asset. The Secretary believes that the section adequately responds to the question and refers to the flexibility that the Secretary has to take action when there is imminent jeopardy to a physical trust asset. The commenter also suggests that the regulations note that under the Act, (25 U.S.C. 3504(e)(2)(D)(ii), the time period for reassumption appears to expire once the violation and any condition that caused the jeopardy is corrected. The Secretary agrees with this assertion and notes that §§ 224.154 and 224.157 deal with setting conditions and a timeline for a reassumption or termination of the reassumption process.

Section 224.160 How will reassumption affect a TERA?

One commenter noted a conflict in the regulations in which § 224.160 states that reassumption of a TERA applies to all activities undertaken under a TERA and § 224.150 of Subpart G titled ''What is the purpose of this subpart?'' states that the subpart explains when and how the Secretary may reassume all or certain activities included within an agreement. The Secretary agrees that these sections of the regulation conflict with each other and notes that the question of reassumption as stated in the Act applies to all activities and resources transferred under a TERA. The Secretary has made changes to both sections to make them consistent and clarify their meaning. In addition, the Secretary made a change to § 224.137(d) to make clear that in case of a finding of non-compliance with a TERA or other applicable Federal law, where said non-compliance does not cause imminent jeopardy to a physical trust asset, the Secretary has the discretion to suspend or rescind a part or all activities approved under a TERA.

Subpart H—Rescission

Section 224.170 What is the purpose of this subpart?

A commenter states that the reassumption and rescission processes should allow for reassumption of specific activities and should not automatically require a tribe to relinquish all activities assumed under a TERA. The Secretary does not agree with this contention. We believe that the language in the regulations is consistent with the Act. When a rescission of a TERA takes place because of a voluntary action by the tribe, it must be done in its entirety. It is only when the rescission is a result of Secretarial action to remedy a finding of non-compliance with the TERA or other applicable Federal laws that the rescission action can be taken in part or whole.

Section 224.172 May a tribe rescind only some of the activities subject to a TERA while retaining a portion of those activities?

One commenter suggests the addition of a new sentence to the end of this section that states, ''Nothing in this section shall prohibit the Secretary and a tribe from amending an agreement to change its scope.'' Another commenter agrees and states that the Secretary's authority could, through an amendment to a TERA, permit a tribe to rescind a portion of a TERA voluntarily. The commenter notes that this would appear to be precluded by § 224.172 in which the Secretary appears to have limited rescission of a TERA to an all or nothing proposition. If the Secretary feels that that is the only statutorily permitted form of unilateral tribal rescission, the

commenter suggests, the Secretary should nonetheless make provision for a mutually agreed upon amendment of a TERA so that the scope of a TERA can be reduced without negating the entire TERA. The commenter argues that it is foreseeable that, in many instances, the precise scope of the optimal TERA will be developed over time and urges the Secretary to retain and apply a flexible approach to TERA amendments. The Secretary believes that the language in this section is consistent with the intent of Congress. However, the Department has added a § 224.66 to allow for a reduction in the scope of a TERA. The Secretary believes that, the addition of this section preserves the flexibility of the tribe and the Secretary while meeting the intent of Congress.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This rule is a significant rule and the Office of Management and Budget has reviewed this rule under Executive Order 12866. We have made the assessments required by E.O. 12866 and the results are summarized below and can be obtained by writing to the address in the addressees section.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These regulations create a process that will allow tribes to enter into an agreement with the Department whose intent is to promote tribal oversight and management of energy and mineral resource development on tribal lands. Approval of a Tribal Energy Resource Agreement (TERA) under the requirements of the regulations and will not, by itself, result in energy development related leases, business agreements, or rights-of-way.

It is important to note that there is a great amount of flexibility in the construction of a TERA with the Department. A TERA can cover energy development on all or part of the tribal land controlled by the tribe for development of energy resources (renewable and/or nonrenewable); including, but not limited to, natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrologic. Energy resource development may include the following types of arrangements between a tribe and private industry or a tribal energy resource development organization (in which the tribe is a partner):

Lease defined as a written agreement, or modification of a written agreement, between a tribe and a tenant or lessee, whereby the tenant or lessee grants a right to possession of tribal land or energy mineral resources for purposes of energy resource development.

Business agreement which includes (1) Any permit, contract, joint venture, option, or other agreement that furthers any activity related to locating, producing, transporting, or marketing energy resources on tribal land; (2) Any amendment, supplement, or other modification to such an agreement; or (3) Any other business agreement entered into or subject to administration under a TERA.

Right-of-Way which means an easement, right, or other authorization over tribal lands, granted or subject to administration under a TERA, for a pipeline or electric transmission or distribution line that serves a facility located on tribal land related to energy resource development.

The ability to derive a quantitative estimate for the overall impact on the economy of these regulations is highly speculative because of the varying size of Indian Tribes, their level of infrastructure and economic development, tribal development expertise, and the type of energy resource that they possess. In addition, it is not known how many tribes will choose a TERA as a development vehicle, since the decision to enter into a TERA is voluntary. In addition the large degree of flexibility with regard to the range of regulatory activities, type of business arrangements, and type and scale of energy development that a tribe may wish to a engage in makes any quantitative analysis of the costs or benefits to a tribe highly uncertain.

The business climate for companies that seek to negotiate for leases, business agreements or rights-of-way for energy development projects on tribal land (as defined in § 224.30) would not change substantially because of these regulations. National or regional economic costs of energy development (i.e. coal vs. natural gas; wind vs. coal) and other market forces (e.g., location, access to transmission networks, cost of technology, etc.) would be the most likely principal drivers for companies that want to enter into energy development-related business arrangements than whether a tribe is negotiating under Indian Mineral Leasing Act, Indian Mineral Development Act or TERA regulations.

One benefit, to both industry and tribes that may occur, could be a reduction in the time needed to complete negotiations and enter into contracts for proposed projects. Presumably once a TERA is final a tribe's capacity to conduct negotiations, complete contractual arrangements, and conduct any needed technical analyses leading to the commencement of operations, would increase with time and could lead to an increased ability of tribes and third parties to more readily take advantage of and adjust to current market conditions without waiting for Departmental approval.

The requirement for submittal of commercial and financial information by businesses contracting with tribes should not change markedly because the regulations require tribes to adhere to administrative practices similar to what the Department already requires. Therefore, compliance costs for businesses should largely remain the same as in the pre-TERA climate.

For tribes, one factor that could increase their administrative costs would be, in some cases, an increased need for creating, maintaining and preserving records of their technical and financial arrangements with industry. These record keeping requirements now largely are the responsibility of the Department.

These recordkeeping requirements are necessary because of the Department's residual trust responsibility under the Act. In the case of a reassumption by the Department or a voluntary rescission by a tribe of authority that is granted through a TERA the Department must be able to regain effective regulatory and management control over any energy development projects on tribal trust land. However, these costs should be largely related to the initial creation of records management systems, acquisition of physical space, and training of staff for implementation.

Another factor that could increase tribal costs would be the assumption by the tribe of costs for assessing potential environmental impacts and creating an ongoing environmental review process for activities covered by a TERA. The regulations as authorized by the Act require a tribe to develop these internal capacities and programs or to identify how they will acquire these capacities externally.

Although a tribe is permitted to identify in a proposed TERA, any Departmental resources that they could use to fund administrative and technical programs that they want to assume activities there is no guarantee that an affirmative decision by the Department would provide enough financial resources to allow the tribe to not incur increased cost. However, the magnitude of these costs is highly uncertain, again because of the large variation in the

range of activities and scale of energy development that a tribe may seek to assume.

The Department believes that the benefits derived from implementation of these regulations are in keeping with Congressional and Departmental goals for advancing tribal self-governance and far outweigh the potential costs as described. Furthermore, these regulations are not unduly burdensome to Indian Tribes, private industry, or consumers and will actually serve to decrease the workload currently in place.

(2) The regulations do not preclude tribes from using other existing regulations to pursue economic development opportunities and so will not create serious inconsistency or otherwise interfere with any action taken or planned by another agency. The main benefit of this rulemaking is an enhanced self-governance opportunity for tribes. By implementing the provisions of the Act, these regulations will further the goal of Indian self-determination, that is a longstanding goal of the Federal Government and the Department.

(3) The creation of a TERA between a tribe and the Department does not affect other entitlement, grant, or loan programs with the Department or any other Federal agency. Furthermore, this rule does not establish new user fees, or restrict in any way any other existing user fees. Therefore, these regulations will not affect any such programs or the rights or obligations of their recipients.

(4) These regulations will not create serious inconsistency with existing laws or executive orders or raise novel legal or policy issues. As stated before the main benefit from these regulations is an enhanced self-governance opportunity for tribes. Implementation of the provisions of the Act is consistent with the Indian Self Determination and Education Assistance Act, as amended. These regulations further the development of Indian self-determination, which is a longstanding goal of the Federal Government and the Department.

Regulatory Flexibility Act (RFA)

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the RFA (5 U.S.C. 601 *et seq.*). Most of the costs for complying with this rule would be information collection costs. The total estimated annual burden hours for responding to the information collection requirements in this rule are 10,752. Respondents to the information collection required by these regulations would need to acquire the services of individuals in the project management and energy, environmental, financial and legal analyses fields as well as administrative service staff. The annual non-hour burden associated with the regulations is $48,200 for office and maintenance expenses associated with preparation of reports and a variety of correspondence. When added to the salary and benefits for personnel, the annual industry-wide cost for the information collection burden in this rule would be about $375,795. Therefore, complying with ''Part 224—Tribal Energy Resource Agreements under The Indian Tribal Energy Development and Self-Determination Act'' should not be a significant financial burden. For a rule with these relatively low projected costs, a Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)) because:

(a) Most of the costs for complying with this rule would be information collection costs. The total estimated industry-wide cost for the information collection burden in this rule would be about $375,000. Therefore, the rule will not have an annual effect on the economy of $100 million or more.

(b) The approval of a Tribal Energy Resource Agreement will not, by itself, result in energy development related leases, business agreements, or rights-of-way. Therefore, the regulations will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic areas.

(c) Because the regulations do not directly result in energy resource development projects, they will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

Participation in the development of Tribal Energy Resource Agreements as outlined in these regulations is voluntary. In addition, there are regulatory alternatives for tribes that want to develop energy resources on tribal lands, but they may not want to develop a TERA. Furthermore, the regulations will not result in the expenditure by the state, local or tribal governments or private sector of $100 million or more in any one year. Therefore, these regulations do not impose an unfunded mandate on state, local, or tribal governments, or the private sector, of more than $100 million per year, and the regulations do not have a significant or unique effect on state, local, or tribal governments, or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Federalism (Executive Order 13132)

According to Executive Order 13132, these regulations do not have Federalism implications. While these regulations are of interest to tribes, there is no federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, the regulations do not substantially and directly affect the relationship between the Federal and State governments, and would not impose costs on states or localities and so do not require a federalism assessment.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system, and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Paperwork Reduction Act (PRA)

Under the proposed rule (71 FR 48626, August 21, 2006), we asked for comments regarding any information collection burdens that would arise under these regulations at 25 CFR part 224 that govern the review of Tribal Energy Resource Agreements and activities undertaken pursuant to a TERA.

We specifically solicited comments on the following questions:

(a) Is the proposed collection of information necessary for the Department to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarify, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

The Department issued a **Federal Register** notice for the information

collection authorization for the proposed rule. After the comment period, the Office of Management and Budget (OMB) subsequently approved the information collection associated with this rule on March 12, 2007 under OMB control number 1076–0167 (OMB approval expires March 31, 2010). The total hour burden currently approved under 1076–0167 is 9,290 hours.

Respondents to the information collections in these regulations derive economic benefit from an enhanced ability to manage energy resources that exist on tribal lands. Therefore, the frequency of response will vary and depends on the respondents' needs. The information collection (IC) does not include questions of a sensitive nature. The Department will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 522) and its implementing regulations (43 CFR part 2) or other applicable laws. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau of Indian Affairs' Information Collection Clearance Officer at (703) 735–4414.

National Environmental Policy Act (NEPA)

This final rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the federal actions under the final rule (i.e., approval or disapproval of TERAs) will be subject at the time of the action itself to the NEPA process, either collectively or case-by-case. (Because they are not Federal actions, approval or disapproval by a tribe of leases, business agreements, and rights-of-way under a TERA will not be subject to NEPA review.) Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Data Quality Act

In developing these regulations, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 13211. The regulations are administrative in nature and will not directly lead to energy development projects. Therefore, they will not have a significant effect on energy supply, or distribution. Thus, a Statement of Energy Effects is not required.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, the Department determined that because the rulemaking will uniquely affect tribal governments it would follow Department and Administrative protocols in consulting with tribal governments on the rulemaking. Consequently, the Department notified tribal governments through a **Federal Register** notice of the proposed rulemaking and through the BIA regional offices. The notices enabled tribal officials and the affected tribal constituency throughout Indian country to have meaningful and timely input in the development of the proposed rule. We believe that these actions reinforce good intergovernmental relations with tribal governments and better inform, educate, and advise such tribal governments on compliance requirements of the rulemaking.

The Department sent letters to tribal leaders on October 31, 2005 with information about the TERA provisions of Title V, Section 503 and solicited participation in a process to develop a framework for the implementing regulations. On December 9, 2005, the Department published a **Federal Register** notice (70 FR 73257) announcing public meetings and tribal consultations in 10 cities between January 9 and 20, 2006. The **Federal Register** notice also solicited written comments and the BIA regional offices distributed the notice to all tribes. We held the meetings in the following cities: Tulsa, OK; Denver, CO; Houston, TX; Albuquerque, NM; Las Vegas, NV; Sacramento, CA; Minneapolis, MN; Billings, MT; Portland, OR; and Washington, DC. The comments received from these public meetings and consultations and the written comments submitted were taken into consideration in the formulation of the proposed regulations. In response to the proposed rule, the Department received comments from several tribes and organizations that represent tribal interests. We have committed to consulting with tribal representatives in developing processes and procedures for the implementation of these Tribal Energy Resource Agreement regulations following publication of the final rule. In addition, the Department has incorporated a Pre- and Post-Application consultation process designed to enable tribes that pursue a TERA with the Department to have the widest available knowledge base with which to operate during the application review and evaluation phase.

List of Subjects in 25 CFR Part 224

Agreement, Appeals, Application, Business Agreements, Energy Development, Interested Party, Lease, Record keeping requirements, Reporting requirements, Right-of-Way, Tribal Energy Resource Agreements, Tribal capacity, Tribal lands, Trust, Trust asset.

Dated: October 1, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

■ For the reasons stated in the preamble, the Department amends Chapter I of Title 25 of the Code of Federal Regulations to add a new part 224, to read as follows:

PART 224—TRIBAL ENERGY RESOURCE AGREEMENTS UNDER THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF DETERMINATION ACT

Subpart A—General Provisions

Sec.

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Subpart B—Procedures for Obtaining Tribal Energy Resource Agreements

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Pre-application Consultation and the Form of Application
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224.53 What must an application for a TERA contain?
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224.54 How must a tribe submit an application?
224.55 Is information a tribe submits throughout the TERA process under this Part subject to disclosure to third parties?
224.56 What is the effect of the Director's receipt of a tribe's complete application?
224.57 What must the Director do upon receipt of an application?
Application Consultation Meeting

224.58 What is an application consultation meeting?
224.59 How will the Director use the results of the application consultation meeting?
224.60 What will the Director provide to the tribe after the application consultation meeting?
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TERA Requirements
224.63 What provisions must a TERA contain?
224.64 How may a tribe assume management of development of different types of energy resources?
224.65 How may a tribe assume additional activities under a TERA?
224.66 How may a tribe reduce the scope of a TERA?
Public Notification and Comment
224.67 What must the Secretary do upon the Director's receipt of a final proposed TERA?
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Subpart C—Approval of Tribal Energy Resource Agreements

224.70 Will the Secretary review a proposed TERA under the National Environmental Policy Act?
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224.74 When must the Secretary approve or disapprove a final proposed TERA?
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Authority: 25 U.S.C. 2 and 9; 25 U.S.C. 3501–3504; Pub. L. 109–58

Subpart A—General Provisions

§ 224.10 What is the purpose of this part?

This part:

(a) Establishes procedures by which a tribe, at its discretion, may enter into and manage leases, business agreements, and rights-of-way for purposes of energy resource development on tribal land; and

(b) Describes the process for obtaining, implementing, and enforcing a tribal energy resource agreement (TERA) that will allow a tribe to enter into individual leases, business agreements, and rights-of-way without obtaining Secretarial approval.

§ 224.20 How will the Secretary interpret and implement this part and the Act?

(a) The Secretary will interpret and implement this part and the Indian Tribal Energy Development and Self-Determination Act (the Act) in accordance with the self-determination and energy development provisions and policies in the Act.

(b) The Secretary will liberally construe this part and the Act for the benefit of tribes to implement the Federal policy of self-determination. The Secretary will construe any ambiguities in this part or the Act in favor of the tribe to implement a TERA as authorized by this part and the Act.

§ 224.30 What definitions apply to this part?

Act means the Indian Tribal Energy Development and Self-Determination Act of 2005, as promulgated in Title V of the Energy Policy Act of 2005, Public Law 109–58, 25 U.S.C. 3501–3504.

Application means the application submitted for a TERA under subpart B.

Business agreement means:

(1) Any permit, contract, joint venture, option, or other agreement that furthers any activity related to locating, producing, transporting, or marketing energy resources on tribal land;

(2) Any amendment, supplement, or other modification to such an agreement; or

(3) Any other business agreement entered into or subject to administration under a TERA.

Days mean calendar days in computing any period prescribed or allowed by the Act and this part:

(1) Do not include the day of the event from which the period begins to run;

(2) Include the last day of the period, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday; and

(3) When the period prescribed or allowed is less than 11 days, exclude intermediate Saturdays, Sundays, and Federal holidays from the computation.

Decision Deadline means the 120-day period within which the Director will make a decision about a petition submitted by an interested party under subpart E. The Director may extend this period for up to 120 days.

Department means the Department of the Interior.

Designated Tribal Official means the official designated in a tribe's pre-application consultation request, application, or agreement to assist in scheduling consultations or to receive communications from the Secretary or the Director to the tribe regarding the status of a TERA or activities under a TERA.

Director means the Director of the Office of Indian Energy and Economic Development or the Secretary's designee, authorized to act on behalf of the Secretary.

Energy Resources means both renewable and nonrenewable energy sources, including, but not limited to, natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrologic resources.

Imminent jeopardy to a physical trust asset means an immediate threat of devaluation, degradation, damage, or loss of a physical trust asset, as determined by the Secretary, caused by the noncompliance of a tribe or third party with a TERA or applicable Federal laws.

Interested party means a person or entity who has filed a petition with the Secretary under subpart E seeking review of a tribe's compliance with a TERA and who meets the criteria in § 224.101.

Lease means a written agreement, or modification of a written agreement, between a tribe and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of tribal land or energy mineral resources for purposes of energy resource development.

Petitioner means a person or entity who has filed a petition under subpart E with a tribe or the Secretary seeking review of a tribe's compliance under a TERA. A petitioner is not considered to be an interested party unless the petitioner meets the criteria in § 224.101.

Physical trust asset means a physical asset held in trust by the United States for a tribe or individual Indian or by a tribe or individual Indian subject to a restriction against alienation under the laws of the United States. ''Physical trust asset'' does not include:

(1) Any improvements (for example, wells or structures) to the assets held in trust or restricted status; or

(2) Monetary assets.

Public means one or more natural or legal persons, and their associations, organizations, or groups; or Federal, State, tribal and local government agencies; or private industry and their associations, organizations, or groups.

Right-of-way means an easement, right, or other authorization over tribal lands, granted or subject to administration under a TERA, for a pipeline or electric transmission or distribution line that serves a facility located on tribal land that is related to energy resource development.

Secretary means the Secretary of the Interior or the Secretary's designee.

TERA means tribal energy resource agreement.

Tribal governing body means a tribe's governing entity, such as tribal council or tribal business committee, as established under tribal or Federal law and recognized by the Secretary.

Tribal land means any land or interests in land owned by a tribe or tribes, title to which is held in trust by the United States, or is subject to a restriction against alienation under the laws of the United States. For the purposes of this part, tribal land includes land taken into trust or subject to restrictions on alienation under the laws of the United States after the effective date of the agreement.

Tribe means any Indian tribe, band, nation, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, except a Native Corporation as defined in the Alaska Native Claims Settlement Act, 43 U.S.C. 1602.

Violation or breach means any breach or other violation by another party of any provision in a lease, business agreement, or right-of-way under a TERA or any activity or occurrence under a lease business agreement or right-of-way that constitutes a violation of Federal or tribal environmental law.

§ 224.40 How does the Act or a TERA affect the Secretary's trust responsibility?

(a) The Act (25 U.S.C. 3504(e)(6)) preserves the Secretary's trust responsibilities relating to mineral and other trust resources and requires the Secretary to act in good faith and in the best interest of Indian tribes.

(b) Neither the Act nor this part absolves the Secretary of responsibilities to Indian tribes under the trust relationship, treaties, statutes, regulations, Executive Orders, agreements or other Federal law.

(c) The Act and this part preserve the Secretary's trust responsibility to ensure that the rights and interests of an Indian tribe are protected if:

(1) Another party to a lease, business agreement, or right-of-way executed under an approved TERA violates any term of the lease, business agreement, or right-of-way, or any applicable Federal law; or

(2) Any provision of a lease, business agreement, or right-of-way violates the TERA under which it was executed.

(d) The United States is not liable for losses to any party (including any tribe) for any negotiated term of, or any loss resulting from, the negotiated terms of a lease, business agreement, or right-of-way the tribe executes under a TERA.

§ 224.41 When does the Secretary require agreement of more than one tribe to approve a TERA?

When tribal land held for the benefit of more than one tribe is contemplated for inclusion in a TERA, each appropriate tribal governing body must request a pre-application consultation meeting, and submit a resolution or formal act of the tribal governing body approving the submission of any application. Each appropriate tribal governing body must also sign the TERA, if it is approved.

§ 224.42 How does the Paperwork Reduction Act affect these regulations?

The information collected from the public is cleared and covered by OMB Control Number 1076–0167. The sections of this rule which have information collections are §§ 224.53, 224.57(d), 224.61, 224.63, 224.64, 224.65, 224.68(d), 224.76, 224.83, 224.87, 224.109, 224.112, 224.120(a), 224.139(b), 224.156, and 224.173. Please note that a Federal Agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Subpart B—Procedures for Obtaining Tribal Energy Resource Agreements

§ 224.50 What is the purpose of this subpart?

This subpart establishes procedures for:

(a) Pre-application and application consultations and process;

(b) Requirements for the content of applications;

(c) Submittal of completed applications; and

(d) Secretarial review and processing of applications.

Pre-application Consultation and the Form of Application

§ 224.51 What is a pre-application consultation between a tribe and the Director?

(a) A tribe interested in entering into a TERA should request a pre-application consultation by writing to the Director, Office of Indian Energy and Economic Development. The request should include the name and contact information for the Designated Tribal Official who will coordinate scheduling with the Director.

(b) Upon receiving a pre-application consultation request, the Director will contact the Designated Tribal Official to schedule a pre-application consultation meeting. The Director may also initiate pre-application discussions with the tribal governing body.

(c) At the pre-application consultation meeting, the tribe and the Director may discuss any of the matters related to a future application including, but not limited to:

(1) The application process;

(2) The potential scope of the tribe's future application, including any regulatory or administrative activities that the tribe anticipates exercising;

(3) The required content of an application for a TERA;

(4) The energy resource the tribe anticipates developing;

(5) The tribe's capacity to manage and regulate the energy resource development the tribe identifies;

(6) Potential opportunities for funding capacity-building and other activities related to the energy resource the tribe anticipates developing under a TERA; and

(7) Any other matters applicable to this part, the Act, and the tribe.

§ 224.52 What may a tribe include in a TERA?

A TERA under this part:

(a) May include development of all or part of a tribe's energy resources;

(b) Must specify the type of energy resource included;

(c) May include assumption by the tribe of certain activities normally carried out by the Department, except for inherently Federal functions; and

(d) Must specify the services or resources related to the specific activity related to energy resource development that the tribe proposes to assume from the Department.

§ 224.53 What must an application for a TERA contain?

(a) An application for a TERA must contain all of the following:

(1) A proposed TERA between the tribe and the Secretary, signed by the authorized representative of the tribe, that contains the provisions required by § 224.63;

(2) A statement that the Secretary recognizes the tribe as an Indian tribe and that the tribe has tribal land;

(3) A brief description of the tribe's form of government;

(4) Copies of relevant portions of tribal documents (see paragraph (b) of this section);

(5) A map, legal description, and general description of the tribal land that the tribe intends to include in the TERA;

(6) A statement that meets the requirements in paragraph (c) of this section;

(7) A statement describing the tribe's experience in negotiating and administering energy-related leases, business agreements, and rights-of-way issued under other Federal laws that includes descriptions of significant leases, business agreements, and rights-of-way the tribe has entered into with third parties or to which it has consented;

(8) A description of the expertise that the tribe will use to administer the TERA and an explanation of how that expertise meets the requirements of paragraph (d) of this section;

(9) A statement of the scope of administrative activities that the tribe intends to conduct and an explanation of how that meets the requirements of paragraph (e) of this section;

(10) A statement that meets the requirements of paragraph (f) of this section describing the capability of the tribe to assume all of the activities the tribe has identified in the application;

(11) A copy of the resolution or formal action of the tribal governing body or bodies under § 224.41 that approves submission of an application for a TERA; and

(12) A designation of, and contact information for, the Designated Tribal

Official who will receive notifications from the Secretary or the Director regarding the status of the TERA application.

(b) The documents required by paragraph (a)(4) of this section include documents such as a constitution, code, ordinance, or resolution, that designate the tribal governing body or tribal officials that have authority to enter into leases, business agreements, or rights-of-way on behalf of the tribe.

(c) The statement required by paragraph (a)(6) of this section must:

(1) If applicable, state that the tribe retains the option of entering into energy-related leases or agreements under laws other than the Act for any tribal land that the TERA includes; and

(2) State one of the following:

(i) The tribe intends the TERA to include all tribal land, energy resources, and categories of energy-related leases, business agreements, and rights-of-way; or

(ii) The tribe intends the TERA to include only certain tribal land, energy resources, or categories of energy-related leases, business agreements, or rights-of-way in the TERA. In this case, the statement must specify and describe the tribal land, energy resources, or categories of energy-related leases, business agreements, or rights-of-way that the tribe intends to include in the TERA.

(3) State the tribe's intent to amend or modify leases, business agreements, or rights-of-way that exist when a TERA is approved if those activities are directly related to the activities authorized by the TERA. The tribe's ability to amend or modify such leases, business agreements or rights-of-way requires the agreement of the other parties to the lease, business agreement or rights-of-way, which must be stated in the TERA.

(d) The statement required by paragraph (a)(8) of this section must describe the expertise that the tribe will use in the four areas specified in paragraph (d)(1) of this section. It must also address, at a minimum, the administrative and personnel resources specified in paragraph (d)(2) of this section.

(1) The statement must describe the expertise that the tribe will use to:

(i) Negotiate or review leases, business agreements, or rights-of-way under the TERA;

(ii) Evaluate the environmental effects, including those related to cultural resources, of leases, business agreements, or rights-of-way entered into under a TERA;

(iii) Review proposals for leases, business agreements and rights-of-way under the TERA; and

(iv) Monitor the compliance of a third party with the terms and conditions of any leases, business agreements and rights-of-way covered by the TERA.

(2) The statement must describe the following:

(i) Existing energy resource development related departments or administrative divisions within the tribe;

(ii) Proposed energy resource development related departments or administrative divisions within the tribe;

(iii) Existing energy resource development related expertise possessed by the tribe, including a description of the relevant expertise of designated tribal employees, consultants and/or advisors; and

(iv) Proposed energy resource development related expertise that the tribe may acquire, including a description of the relevant expertise of designated tribal employees, consultants and/or advisors that the tribe intends to hire or retain.

(e) The statement required by paragraph (a)(9) of this section must describe the amount of administrative activities related to the permitting, approval, and monitoring of activities, as applicable, that the tribe proposes to undertake under any lease, business agreement, or right-of-way the tribe executes under an approved TERA.

(1) If the tribe proposes to regulate activities, the tribe must state its intent and describe the scope of the tribe's plan for such administration and management in sufficient detail for the Secretary to determine the tribe's capacity to administer and manage the regulatory activity(ies).

(2) The tribe's intended scope of administrative responsibilities may not include the responsibilities of the Federal Government under the Endangered Species Act or other inherently Federal functions.

(3) If the tribe intends to regulate activities, it should also describe the regulatory activities it desires to assume in the geographical area identified in § 224.53(c)(2) with respect to leases, business agreements, and rights-of-way that exist when a TERA is approved.

(f) The statement required by paragraph (a)(10) of this section must:

(1) Describe the tribe's ability to negotiate and enter into leases, business agreements, and rights-of-way;

(2) Include a discussion of the estimated annual costs to the tribe to assume those activities the tribe has identified in the application and the proposed source of tribal funds to carry out those activities; and

(3) Describe the estimated annual amounts needed to conduct those activities the tribe has identified in the application and identify the Federal program that may provide those funds, if one of the sources of tribal funds includes grants or contract awards from the Department, the Department of Energy, or other Federal agencies.

(4) Include a description of any:

(i) Compacts and contracts between the tribe and the Secretary under the Indian Self-Determination and Education Assistance Act, as amended;

(ii) Environmental programs a tribe has assumed under the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C.A. 7401); or

(iii) Cooperative agreements under the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701 *et seq.*).

Processing Applications

§ 224.54 How must a tribe submit an application?

A tribe must submit an application and all supporting documents in written and electronic form to the Director.

§ 224.55 Is information a tribe submits throughout the TERA process under this Part subject to disclosure to third parties?

The requirements of this section implement the requirements of the Freedom of Information Act (5 U.S.C. 552) (FOIA) and 43 CFR Part 2:

(a) Information a tribe submits to the Department throughout the TERA process under this Part may be subject to disclosure to third parties under FOIA unless a FOIA exemption or exception applies or other provisions of law protect the information.

(b) A tribe may, but is not required to, designate information it submits as confidential commercially or financially sensitive information, as applicable, in any submissions it makes throughout the TERA process, including, but not limited to:

(1) Pre-application information;

(2) Application information

(3) A final proposed TERA;

(4) Any amendments to a TERA; and

(5) Leases, business agreements, and grants of right-of-way executed under an approved TERA.

(c) Upon receipt of a FOIA request for records that contain commercial or financial information a tribe has submitted under the TERA process, as required by 43 CFR Part 2 the Department will provide the tribe, as submitter, with written notice of the FOIA request if:

(1) The tribe has designated the information as confidential commercial or financial information; or

(2) The Department has reason to believe that the information requested may be protected under FOIA Exemption 4 (trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential).

(d) The notice to the tribe will:

(1) Include a copy of the FOIA request;

(2) Describe the information requested or include copies of the pertinent records;

(3) Advise the tribe of procedures for objecting to the release of the requested information and specify the time limit for the tribe's response;

(4) Give the tribe no less than ten (10) working days from the Department's notice to object to the release and explain the basis for objection, if any;

(5) Advise the tribe that:

(i) Information contained in the tribe's objections may be subject to disclosure under FOIA if the Department receives a FOIA request for it; and

(ii) If the tribe's objections contain commercial or financial information and a requestor asks for the objections under FOIA, the same notification procedures as above will apply;

(6) Advise the tribe that it is the Department, rather than the tribe, that is responsible for deciding whether the information will be released or withheld;

(7) If the tribe designated the information as commercial or financial information 10 or more years before the FOIA request, the Department will request the tribe's views on whether the tribe still considers the information to be confidential;

(e) If the tribe has any objection to disclosure of the information, the tribe must submit a detailed written statement to the Department including the following:

(1) The justification for withholding any portion of the information under any exemption of FOIA, and if the applicable exemption is Exemption 4, the tribe must submit a specific and detailed discussion of:

(i) Whether the Federal government required the information to be submitted, and, if so, how substantial competitive harm or other business harm would likely result from release of the information; or

(ii) Whether the tribe provided the information voluntarily and, if so, how the information fits into a category of information that the tribe customarily does not release to the public;

(2) A certification that the information is confidential, has not been disclosed to the public by the tribe, and is essentially non-public because it is not routinely available to the public from other sources;

(3) If not already provided, a tribal contact telephone and fax number so that the Department can communicate with the tribe about the FOIA request;

(f) The Department will review and consider all objections to release that are received within the time limits specified in the notice to the tribe, and if the tribe does not respond within the time limits specified in the notice, the Department will presume that the tribe has no objection to release of the information;

(g) If the Department decides to release the information over the objection of the tribe, it will notify the tribe in writing by certified mail, return receipt requested, and will include copies of the records the Department intends to release and the reasons for deciding to release them. The notice will also inform the tribe that it intends to release the records within 10 working days after the tribe's receipt of the notice.

§ 224.56 What is the effect of the Director's receipt of a tribe's complete application?

The Director's receipt of a tribe's complete application begins a 270-day statutorily mandated period during which the Secretary must approve or disapprove a proposed TERA. With the consent of the tribe, the Secretary may extend the 270-day period for making a decision.

§ 224.57 What must the Director do upon receipt of an application?

(a) Upon receiving an application for a TERA, the Director must:

(1) Promptly notify the Designated Tribal Official in writing that the Director has received the application and the date it was received;

(2) Within 30 days from the date of receiving the application, determine whether the application is complete; and

(3) Take the following actions:

If the Director determines that . . .	Then the Director must . . .
(i) The application is complete.	(A) Issue a written notice and a request for an application consultation meeting to the Designated Tribal Official; and (B) If appropriate, notify other Departmental bureaus and offices of receiving the application and provide copies.
(ii) The application is not complete.	(A) Issue a written notice to the Designated Tribal Official that the application is not complete; (B) Specify the additional information the tribe is required to submit to make the application complete; and (C) Start the 270-day review period only when the Director receives a complete application.

(b) Unless the Director notifies the Designated Tribal Official during the 30-day review period that the application is not complete, the application is presumed to be complete and the 270-day review period under 25 U.S.C. 3504(e)(2)(A) of the Act will begin as of the date that the application was received.

Application Consultation Meeting

§ 224.58 What is an application consultation meeting?

An application consultation meeting is a meeting held at the tribe's headquarters between the Director and the tribal governing body and any other representatives that the tribe may designate to discuss the TERA application. The Secretary will designate representatives of appropriate Departmental offices or bureaus to attend the application consultation meeting, as necessary. The tribe may record the meeting. The meeting will:

(a) Be held at the earliest practicable time after the Director receives a tribe's complete application;

(b) Include a thorough discussion of the tribe's application;

(c) Identify the specific services consistent with the Secretary's ongoing trust responsibility and available resources that the Department would provide to the tribe upon the approval of a TERA;

(d) Include a discussion of the relationship of the tribe to other Federal agencies with responsibilities for implementing or ensuring compliance with the terms and conditions of leases, business agreements, or rights-of-way and applicable Federal laws;

(e) Include a discussion of the relationship of the tribe to its members, to State and local governments, and to non-Indians who may be affected by approval of a TERA or by leases, business agreements, or rights-of-way that the tribe may enter into or grant under an approved TERA;

(f) Include a discussion of the tribal administrative, financial, technical, and managerial capacities needed to carry out the tribe's obligations under a TERA; and

(g) Include a discussion of the form of the TERA and the timing and relative responsibilities of the parties for its preparation.

§ 224.59 How will the Director use the results of the application consultation meeting?

The Director will use the information gathered during the application consultation meeting in conjunction with information provided through § 224.53 and § 224.63 to determine the energy resource development capacity of the tribe as detailed in § 224.72.

§ 224.60 What will the Director provide to the tribe after the application consultation meeting?

Within 30 days following the meeting with the tribe, the Director will provide to the Designated Tribal Official a written report on the application consultation meeting. The report must include the Director's recommendations, if any, for revising the proposed TERA that was submitted as part of the tribe's application.

§ 224.61 What will the tribe provide to the Director after receipt of the Director's report on the application consultation meeting?

If the tribe wishes to proceed with the application, the tribe must submit a final proposed TERA to the Director within 45 days following the date of the Tribe's receipt of the Director's report on the application consultation meeting.

§ 224.62 May a final proposed TERA differ from the original proposed TERA?

The final proposed TERA may or may not contain provisions that differ from the original proposed TERA submitted with the application.

(a) If a final proposed TERA does not differ significantly or materially from the original TERA contained in the complete application, the 270-day review period will begin to run on the date the original complete application was received (under § 224.57(c)) or on the date established by operation of § 224.57(d)).

(b) If a final proposed TERA differs significantly or materially from the original TERA contained in the complete application, the Secretary, with the tribe's consent, may extend the 270-day period for a reasonable time. The Secretary will notify the tribe in writing if an extension of time is necessary.

TERA Requirements

§ 224.63 What provisions must a TERA contain?

A TERA must contain all the elements required by this section.

(a) A provision for the Secretary's periodic review and evaluation of the tribe's performance under a TERA.

(b) A provision that recognizes the authority of the Secretary, upon a finding of imminent jeopardy to a physical trust asset, to take actions the Secretary determines to be necessary to protect the asset, including reassumption under subparts F and G of this part.

(c) A provision under which the tribe establishes and ensures compliance with an environmental review process for leases, business agreements, and rights-of-way which, at a minimum:

(1) Identifies and evaluates all significant environmental effects (as compared to a no-action alternative), including effects on cultural resources, arising from a lease, business agreement, or right-of-way;

(2) Identifies proposed mitigation measures, if any, and incorporates appropriate mitigation measures into the lease, business agreement, or right-of-way;

(3) Informs the public and provides opportunity for public comment on the environmental impacts of the approval of the lease, business agreement or right-of-way;

(4) Provides for tribal responses to relevant and substantive public comments before tribal approval of the lease, business agreement or right-of-way;

(5) Provides for sufficient tribal administrative support and technical capability to carry out the environmental review process; and

(6) Develops adequate tribal oversight of energy resource development activities under any lease, business agreement or right-of-way under a TERA that any other party conducts to determine whether the activities comply with the TERA and applicable Federal and tribal environmental laws.

(d) Provisions that require, with respect to any lease, business agreement, or right-of-way approved under a TERA, all of the following:

(1) Mechanisms for obtaining corporate, technical, and financial qualifications of a third party that has applied to enter into a lease, business agreement, or right-of-way;

(2) Express limitations on duration that meet the restrictions of the Act and this Part under § 224.86;

(3) Mechanisms for amendment, transfer, and renewal;

(4) Mechanisms for obtaining, reporting and evaluating the economic return to the tribe;

(5) Mechanisms for securing technical information about activities and ensuring that technical activities are performed in compliance with terms and conditions;

(6) Assurances of the tribe's compliance with all applicable environmental laws;

(7) Requirements that the lessee, operator, or right-of-way grantee will comply with all applicable environmental laws;

(8) Identification of tribal representatives with the authority to approve a lease, business agreement, or right-of-way and the related energy development activities that would occur under a lease, business agreement, or right-of-way;

(9) Public notification that a lease, business agreement, or right-of-way has received final tribal approval;

(10) A process for consultation with affected States regarding off-reservation impacts, if any, identified under paragraph (c) of this section;

(11) A description of remedies for breach;

(12) A statement that any provision that violates an express term or requirement of the TERA is null and void;

(13) A statement that if the Secretary determines that any provision that violates an express term or requirement of the TERA is material, the Secretary may suspend or rescind the lease, business agreement, or right-of-way, or take any action the Secretary determines to be in the best interest of the tribe, including, with the consent of the parties, revising the nonconforming provisions so that they conform to the intent of the applicable portion of the TERA; and

(14) A statement that the lease, business agreement, or right-of-way subject to a TERA, unless otherwise provided, goes into effect when the tribe delivers executed copies of the lease, business agreement, or right-of-way to the Director by first class mail return receipt requested or express delivery. The parties to a lease, business agreement, or right-of-way may agree in writing that any provision of their contract may have retroactive application.

(e) Citations to any applicable tribal laws, regulations, or procedures that:

(1) Provide opportunity for the public to comment on and to participate in public hearings, if any, under paragraph (c)(2) of this section; and

(2) Provide remedies that petitioning parties must exhaust before filing a

petition with the Secretary under subpart E of this part.

(f) Provisions that require a tribe to provide the Secretary with citations to any tribal laws, regulations, or procedures the tribe adopts after the effective date of a TERA that establish, amend, or supplement tribal remedies that petitioning parties must exhaust before filing a petition with the Secretary under subpart E of this part.

(g) Provisions that designate a person or entity, together with contact information, authorized by the tribe to maintain and disseminate to requesting members of the public current copies of tribal laws, regulations, or procedures that establish or describe tribal remedies that petitioning parties must exhaust before instituting appeals under subpart E of this part.

(h) Identification of financial assistance, if any, that the Secretary has agreed to provide to the tribe to assist in implementation of the TERA, including the tribe's environmental review of individual energy development activities.

(i) Provisions that require a tribe to notify the Secretary and the Director in writing, as soon as practicable after the tribe receives notice, of a violation or breach as defined in this Part.

(j) Provisions that require the tribe and the tribe's financial experts to adhere to Government auditing standards and to applicable continuing professional education requirements.

(k) Provisions that require the tribe to submit to the Director information and documentation of payments made directly to the tribe, if any. These provisions enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the rights of the tribe under, a lease, business agreement, or right-of-way. Required documentation must include documents evidencing proof of payment such as cancelled checks; cash receipt vouchers; copies of money orders or cashiers checks; or verification of electronic payments.

(l) Provisions that ensure the creation, maintenance and preservation of records related to leases, business agreements, or rights-of-way and performance of activities a tribe assumed under a TERA sufficient to facilitate the Secretary's periodic review of the TERA. The Secretary will use these records as part of the periodic review and evaluation process under § 224.132. Approved Departmental records retention procedures under the Federal Records Act (44 U.S.C. Chapters 29, 31, and 33) provide a framework the tribe may use to ensure that its records under a TERA adequately document essential transactions, furnish information necessary to protect its legal and financial rights, and enable the Secretary to discharge the trust responsibility if:

(1) Any other party violates the terms of any lease, business agreement, or right-of-way; or

(2) Any provision of a lease, business agreement or right-of-way violates the TERA.

§ 224.64 How may a tribe assume management of development of different types of energy resources?

In order for a tribe to assume authority for approving leases, business agreements, and rights-of-way for development of another energy resource that is not included in the TERA, a tribe must apply for a new TERA covering the authority for the development of another energy resource it wishes to assume. The Secretary's consideration of a new TERA will include a determination of the tribe's capacity to develop that type of energy resource and will trigger the public notice and opportunity for comment consistent with § 224.67.

§ 224.65 How may a tribe assume additional activities under a TERA?

A tribe may assume additional activities related to the development of the same type of energy resource included in a TERA by negotiating with the Secretary an amendment to the existing TERA to include the additional activities. The Secretary will determine in each case whether the tribe has sufficient capacity to carry out additional activities the tribe may wish to assume under an approved TERA.

§ 224.66 How may a tribe reduce the scope of the TERA?

A tribe may reduce the scope of the TERA by negotiating with the Secretary an amendment to the existing TERA to eliminate an activity assumed under the TERA or a type of energy resource development managed under the TERA. Any such reduction in scope must include the return of all relevant Departmental resources transferred under the TERA and any relevant records and documents.

Public Notification and Comment

§ 224.67 What must the Secretary do upon the Director's receipt of a final proposed TERA?

(a) Within 10 days of the Director's receipt of a final proposed TERA, the Secretary must submit a notice for publication in the **Federal Register** advising the public:

(1) That the Secretary is considering a final proposed TERA for approval or disapproval: and

(2) Of any National Environmental Policy Act (NEPA) review the Secretary is conducting.

(b) The **Federal Register** notice will:

(1) Contain information advising the public how to request and receive copies of or participate in any NEPA reviews, as prescribed in subpart C of this part, related to approval of the final proposed TERA; and

(2) Contain information advising the public how to comment on a final proposed TERA.

§ 224.68 How will the Secretary use public comments?

(a) The Secretary will review and consider public comments in deciding to approve or disapprove the final proposed TERA; and

(b) The Secretary will provide copies of the comments to the Designated Tribal Official;

(c) Upon mutual agreement between the tribe and the Secretary, the tribe may make changes in the final proposed TERA based on the comments received; and

(d) If the tribe revises the final proposed TERA based on public comments, the tribal governing body must approve the changes, the authorized representative of the tribe must sign the final proposed TERA as revised, and the tribe must send the revised final proposed TERA to the Director. The Secretary and the tribe will consult on whether an extension of the review period is necessary under § 224.62(b).

Subpart C—Approval of Tribal Energy Resource Agreements

§ 224.70 Will the Secretary review a proposed TERA under the National Environmental Policy Act?

Yes, the Secretary will conduct a review under the National Environmental Policy Act (NEPA) of the potential impacts on the quality of the human environment that might arise from approving a final proposed TERA. The scope of the Secretary's evaluation will be limited to the scope of the TERA. The public comment period, when required, under the NEPA review will occur concurrently with the public comment period for a TERA under § 224.67.

§ 224.71 What standards will the Secretary use to decide to approve a final proposed TERA?

The Secretary will consider the best interests of the tribe and the Federal policy of promoting tribal self-

determination in deciding whether to approve a final proposed TERA. The Secretary must approve a final proposed TERA if it contains the provisions required by the Act and this part and the Secretary determines that the tribe has demonstrated sufficient capacity to manage the development of energy resources it proposes to develop.

§ 224.72 How will the Secretary determine whether a tribe has demonstrated sufficient capacity?

The Secretary will determine whether a tribe has demonstrated sufficient capacity under § 224.71 based on the information obtained through the application process. The Secretary will consider:

(a) The specific energy resource development the tribe proposes to regulate;

(b) The scope of the administrative or regulatory activities the tribe seeks to assume;

(c) Materials and information submitted with the application for a TERA, the result of meetings between the tribe and a representative of the Department and the Director's written report;

(d) The history of the tribe's role in energy resource development, including negotiating and approval or disapproval of pre-existing energy-related leases, business agreements, and rights-of-way;

(e) The administrative expertise of the tribe available to regulate energy resource development within the scope of the final proposed TERA or the tribe's plans for establishing that expertise;

(f) The financial capacity of the tribe to maintain or procure the technical expertise needed to evaluate proposals and to monitor anticipated activities in a prudent manner;

(g) The tribe's past performance administering contracts and grants associated with self-determination programs, cooperative agreements with Federal and State agencies, and environmental programs administered by the Environmental Protection Agency;

(h) The tribe's past performance monitoring activities undertaken by third parties under approved leases, business agreements, or rights-of-way; and

(i) Any other factors the Secretary finds to be relevant in light of the scope of the proposed TERA.

§ 224.73 How will the scope of energy resource development affect the Secretary's determination of the tribe's capacity?

The Secretary's review under § 224.72 of the tribe's capacity to manage and regulate energy resource development under the TERA will include a determination as to each type of energy resource development subject to the TERA for which the tribe seeks to regulate, and each type of regulatory activity the tribe proposes to assume. The Secretary's review of a TERA must be limited to activities specified by its provisions.

§ 224.74 When must the Secretary approve or disapprove a final proposed TERA?

The Secretary must approve or disapprove a final proposed TERA or a revised final proposed TERA within 270 days of the Director's receipt of a complete application for a TERA. With the consent of the tribe, or as provided in § 224.62(b), the Secretary may extend the period for a decision.

§ 224.75 What must the Secretary do upon approval or disapproval of a final proposed TERA?

Within 10 days of the Secretary's approval or disapproval of a final proposed TERA, the Secretary must notify the tribal governing body in writing and take the following actions:

If the Secretary's decision is . . .	Then the Secretary will . . .
(a) To approve the final proposed TERA.	(1) Sign the TERA making it effective on the date of signature, and return the signed TERA to the tribal governing body; and (2) Maintain a copy of the TERA and any subsequent amendments or supplements to the TERA.
(b) To disapprove the final proposed TERA.	Send the tribe a notice of disapproval that must include: (1) The basis of the disapproval; (2) The changes or other actions required to address the Secretary's basis for disapproval; and (3) A statement that the decision is a final agency action and is subject to judicial review.

§ 224.76 Upon notification of disapproval, may a tribe re-submit a revised final proposed TERA?

Yes, within 45 days of receiving the notice of disapproval, or a later date as the Secretary and the tribe agree to in writing, the tribe may re-submit a revised final proposed TERA, approved by the tribal governing body and signed by the tribe's authorized representative, to the Director that addresses the Secretary's concerns. Unless the Secretary and the tribe otherwise agree, the Secretary must approve or disapprove the revised final proposed TERA within 60 days of the Director's receipt of the revised final proposed TERA. Within 10 days of the Secretary's approval or disapproval of a revised final proposed TERA, the Secretary must notify the tribal governing body in writing and take the following actions:

If the Secretary's decision is . . .	Then the Secretary will . . .
(a) To approve the revised final proposed TERA.	(1) Sign the TERA making it effective on the date of signature, and return the signed TERA to the tribal governing body; and (2) Maintain a copy of the TERA and any subsequent amendments or supplements to the TERA.
(b) To disapprove the revised final proposed TERA.	Send the tribe a notice of disapproval that must include: (1) The reasons for the disapproval; and (2) A statement that the decision is a final agency action and is subject to judicial review.

§ 224.77 Who may appeal the Secretary's decision on a final proposed TERA or a revised final proposed TERA?

Only a tribe applying for a TERA may appeal the Secretary's decision to disapprove a final proposed TERA or a revised final proposed TERA in accordance with the appeal procedures contained in subpart I of this part. No other person or entity may appeal the Secretary's decision. The Secretary's decision to approve a final proposed TERA or a revised final proposed TERA is a final agency action.

Subpart D—Implementation of Tribal Energy Resource Agreements

Applicable Authorities and Responsibilities

§ 224.80 Under what authority will a tribe perform activities for energy resource development?

A tribe will perform activities for energy resource development activities undertaken under a TERA under the authorities provided in the approved TERA. Notwithstanding anything in this part or an approved TERA to the contrary, a tribe will retain all sovereign and other powers it otherwise possesses.

§ 224.81 What laws are applicable to activities?

Federal and tribal laws apply to activities under a TERA, unless otherwise specified in the TERA.

§ 224.82 What activities will the Department continue to perform after approval of a TERA?

After approval of a TERA, the Department will provide a tribe:

(a) All activities that the Department performs unless the tribe has assumed such activities under the TERA;

(b) Access to title status information and support services needed by a tribe in the course of evaluating proposals for leases, business agreements, or rights-of-way;

(c) Coordination between the tribe and the Department for ongoing maintenance of accurate real property records;

(d) Access to technical support services within the Department to assist the tribe in evaluating the physical, economic, financial, cultural, social, environmental, and legal consequences of approving proposals for leases, business agreements, or rights-of-way under a TERA; and

(e) Assistance to ensure that third-party violations or breaches of the terms of leases, business agreements, or rights-of-way or applicable provisions of Federal law by third parties are handled appropriately.

Leases, Business Agreements, and Rights-of-way Under a TERA

§ 224.83 What must a tribe do after executing a lease or business agreement, or granting a right-of-way?

Following the execution of a lease, business agreement, or grant of right-of-way under a TERA, a tribe must:

(a) Inform the public of approval of the lease, business agreement, or right-of-way under the authority granted in the TERA; and

(b) Send a copy of the executed lease, business agreement, or right-of-way, or amendments, to the Director within one business day of execution. The copy must be sent by certified mail return receipt requested or by overnight delivery.

§ 224.84 When may a tribe grant a right-of-way?

A tribe may grant a right-of-way under a TERA if the grant of right-of-way is over tribal land for a pipeline or an electric transmission or distribution line if the pipeline or electric transmission or distribution line serves:

(a) An electric generation, transmission, or distribution facility located on tribal land; or

(b) A facility located on tribal land that processes or refines energy resources developed on tribal land.

§ 224.85 When may a tribe enter into a lease or business agreement?

A tribe may enter into a lease or business agreement for the purpose of energy resource development for:

(a) Exploration for, extraction of, or other development of the tribe's energy mineral resources on tribal land including, but not limited to, marketing or distribution;

(b) Construction or operation of an electric generation, transmission, or distribution facility located on tribal land; or

(c) A facility to process or refine energy resources developed on tribal land.

§ 224.86 Are there limits on the duration of leases, business agreements, and rights-of-way?

(a) The duration of leases, business agreements, and rights-of-way entered into under a TERA are limited as follows:

(1) For leases and business agreements, except as provided in paragraph (b) of this section, 30 years;

(2) For leases for production of oil resources and gas resources, or both, 10 years and as long after as oil or gas production continues in paying quantities; and

(3) For rights-of-way, 30 years.

(b) A lease or business agreement a tribe enters into, or a right-of-way a tribe grants may be renewed at the discretion of the tribe as long as the TERA remains in effect and the approved activities have not been rescinded by the tribe or suspended or reassumed by the Department.

Violation or Breach

§ 224.87 What are the obligations of a tribe if it discovers a violation or breach?

As soon as practicable after discovering or receiving notice of a violation or breach of a lease, business agreement, or right-of-way of a Federal or tribal environmental law resulting from an activity undertaken by a third party under a lease, business agreement, or right-of-way, the tribe must provide written notice to the Director describing:

(a) The nature of the violation or breach in reasonable detail;

(b) The corrective action taken or planned by the tribe; and

(c) The proposed period for the corrective action to be completed.

§ 224.88 What must the Director do after receiving notice of a violation or breach from the tribe?

After receiving notice of a violation or breach from the tribe, the Director will:

(a) Review the notice and conduct an investigation under § 224.135(b) including, as necessary:

(1) An on-site inspection; and

(2) A review of relevant records, including transactions and reports.

(b) If the Director determines, after the investigation, that a violation or breach is not causing or will not cause imminent jeopardy to a physical trust asset, the Director will review, for concurrence or disapproval, the corrective action to be taken or imposed by the tribe and the proposed period for completion of the corrective action;

(c) If the Director determines, after the investigation, that a violation or breach is causing or will cause imminent jeopardy to a physical trust asset, the Director will proceed under the imminent jeopardy provisions of subpart F of this part.

§ 224.89 What procedures will the Secretary use to enforce leases, business agreements, or rights-of-way?

(a) The Secretary and a tribe will consult with each other regarding enforcement of and Secretarial assistance needed to enforce leases, business agreements, or rights-of-way entered into under a TERA. When appropriate, the Secretary will:

(1) Use the notification and enforcement procedures established in 25 CFR parts 162, 211 and 225 to ensure

compliance with leases and business agreements; and

(2) Use the notification and enforcement procedures of 25 CFR part 169 to ensure compliance with rights-of-way.

(b) All enforcement remedies established in 25 CFR parts 162, 211, 225, and 169 are available to the Secretary.

Subpart E—Interested Party Petitions

§ 224.100 May a person or entity ask the Secretary to review a tribe's compliance with a TERA?

In accordance with this subpart, a person or entity that may be an interested party may submit to the Secretary a petition to review a tribe's compliance with a TERA. However, before filing a petition with the Secretary, a person or entity that may be an interested party must first exhaust tribal remedies, if a tribe has provided for such remedies. If a tribe has not provided for tribal remedies, a person or entity that may be an interested party may file a petition directly with the Secretary.

§ 224.101 Who is an interested party?

For the purposes of this Part, an interested party is a person or entity that has demonstrated that an interest of the person or entity has sustained, or will sustain, an adverse environmental impact as a result of a tribe's failure to comply with a TERA.

§ 224.102 Must a tribe establish a comment or hearing process for addressing environmental concerns?

Yes. The Act (25 U.S.C. 3504(e)(2)(C)(iii)(I), (II) and 25 U.S.C. 3504(e)(2)(B)(iii)(X)) and subpart B of this part require a tribe to establish an environmental review process under a TERA that:

(a) Ensures that the public is notified about and has an opportunity to comment on the environmental impacts of proposed tribal action to be taken under a TERA;

(b) Requires that the tribe respond to relevant and substantive comments about the environmental impacts of a proposed tribal action before the tribe approves a lease, business agreement, or right-of-way; and

(c) Provides for a process for consultation with any affected States regarding off-reservation environmental impacts, if any, resulting from approval of a lease, business agreement, or right-of-way.

§ 224.103 Must a tribe establish other public participation processes?

No. Except for the environmental review process required by the Act and § 224.63(b)(1), a tribe is not required to establish a process for public participation concerning non-environmental issues in a TERA or leases, business agreements or rights-of-way undertaken under a TERA. However, a tribe may elect to establish procedures that permit the public to participate in public hearings or that expand the scope of matters about which the public may comment.

§ 224.104 Must a tribe enact tribal laws, regulations, or procedures permitting a person or entity to allege that a tribe is not complying with a TERA?

No. A tribe is not required, but may elect, to enact tribal laws, regulations, or procedures permitting a person or entity that may be an interested party to allege that a tribe is not complying with its TERA.

§ 224.105 How may a person or entity obtain copies of tribal laws, regulations, or procedures that would permit an allegation of noncompliance with a TERA?

(a) A person or entity that may be an interested party may obtain copies of tribal laws, regulations, or procedures that establish tribal remedies that permit a person or entity to allege that the tribe is not complying with its TERA by making a request to the tribe in accordance with the TERA and § 224.63(g).

(b) Upon obtaining copies of tribal laws, regulations, or procedures under subsection (a), a person or entity that may be an interested party may file a petition with the tribe under those tribal laws, regulations, or procedures.

(c) If the person or entity that may be an interested party files a petition alleging noncompliance with a TERA, the person or entity becomes a petitioner, and the tribe must respond according to § 224.106.

§ 224.106 If a tribe has enacted tribal laws, regulations, or procedures for challenging tribal action, how must the tribe respond to a petition?

If a tribe has enacted tribal laws, regulations, or procedures under which a petitioner may file a petition alleging noncompliance with a TERA, the tribe must:

(a) Within a reasonable time issue a final written decision under the tribal laws, regulations, or procedures that addresses the claim. The decision may include a determination of whether the petitioner is an interested party;

(b) Provide a copy of its final written decision to the petitioner; and

(c) If the tribe fails, within a reasonable period, to issue a written decision to a petition that a petitioner brings under applicable tribal laws, regulations, or procedures the petitioner may file a petition with the Secretary.

§ 224.107 What must a petitioner do before filing a petition with the Secretary?

Before a petitioner may file a petition with the Secretary under this subpart, the petitioner must have exhausted tribal remedies by participating in any tribal process under § 224.106, including any tribal appeal process.

§ 224.108 May tribes offer a resolution of a petitioner's claim?

Yes. In responding to a petition filed under tribal laws, regulations or procedures, a tribe may, with the petitioner's written consent, resolve the petitioner's claims.

§ 224.109 What must a petitioner claim or request in a petition filed with the Secretary?

In a petition filed with the Secretary, a petitioner must:

(a) Claim that the tribe, through its action or inaction has failed to comply with terms or provisions of a TERA, and, as a result, the petitioner's interest has sustained or will sustain an adverse environmental impact.

(b) Request that the Secretary review the claims raised in the petition; and

(c) Request that the Secretary take whatever action is necessary to bring a tribe into compliance with the TERA.

§ 224.110 What must a petition to the Secretary contain?

A petition must contain:

(a) The petitioner's name and contact information;

(b) Specific facts demonstrating that the interested party under § 224.101, including identification of the affected interest;

(c) Specific facts demonstrating that the petitioner exhausted tribal remedies, if tribal laws, regulations, or procedures permitted the petitioner to allege tribal noncompliance with a TERA;

(d) A description of facts supporting the petitioner's allegation of the tribe's noncompliance with a TERA;

(e) A description of the adverse environmental impact that the petitioner's interest has sustained or will sustain because of the tribe's alleged noncompliance with the TERA;

(f) A copy of any written decision the tribe issued responding to the petitioner's claims;

(g) If applicable, a statement that the tribe has issued no written decision within a reasonable time related to a claim a petitioner has filed with the tribe under applicable tribal laws, regulations, or procedures;

(h) If applicable, a statement and supporting documentation that the tribe

did not respond to the petitioner's request under § 224.105(a) for copies of any tribal laws, regulations, or procedures allowing the petitioner to allege that the tribe is not complying with a TERA; and

(i) Any other information relevant to the petition.

§ 224.111 When may a petitioner file a petition with the Secretary?

(a) A petitioner may file a petition with the Secretary:

(1) By delivering the petition to the Director within 30 days of receiving the tribe's final written decision addressing the allegation of noncompliance under applicable tribal laws, regulations, or procedures;

(2) Within a reasonable period following the tribe's constructive denial of the petition under § 224.106(c), and the Secretary will determine if the petition is timely in light of the applicable facts and circumstances; or

(3) The tribe did not respond to the petitioner's request for copies of any tribal laws, regulations, or procedures under § 224.105(a).

(b) A petitioner may file a petition directly with the Secretary if the tribe has no tribal laws, regulations or procedures that provide the petitioner an opportunity to allege tribal noncompliance with a TERA.

§ 224.112 What must the Director do upon receipt of a petition?

Within 20 days after receiving a petition, the Director must:

(a) Notify the tribe in writing that the Director has received a petition;

(b) Provide a copy of the complete petition to the tribe;

(c) Initiate a petition consultation with the tribe that will address the petitioner's allegation of a tribe's noncompliance with a TERA and alternatives to resolve any noncompliance; and

(d) Notify the tribe in writing by certified mail, return receipt requested, when the petition consultation is complete.

§ 224.113 What must the tribe do after it completes petition consultation with the Director?

(a) Within 45 days of receiving the Director's notice that the petition consultation is complete, the tribe must respond to any claim made in the petition by submitting a written response to the Director; and

(b) Within a reasonable time after 45 days following the completion of the petition consultation process, the tribe must cure or otherwise resolve each claim of noncompliance made in the petition.

§ 224.114 How may the tribe address a petition in its written response?

In addition to responding to the petitioner's claims, the tribe may also:

(a) Include its interpretation of relevant provisions of the TERA and other legal requirements;

(b) Discuss whether the petitioner is an interested party;

(c) State whether the petitioner has exhausted tribal remedies, and if so, how; and

(d) Propose to cure or otherwise resolve the claims within the time frame in § 224.113(b).

§ 224.115 When in the petition process must the Director investigate a tribe's compliance with a TERA?

The Director must investigate the petitioner's claims of the tribe's noncompliance with a TERA only after making a threshold determination that:

(a) The tribe has denied or failed to respond to each claim made in the petition within the period under § 224.113(a); or

(b) The tribe has failed, refused, or was unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the Director, after the expiration of the period in § 224.113(b).

§ 224.116 What is the time period in which the Director must investigate a tribe's compliance with a TERA?

(a) If the Director determines under § 224.115 that one of the threshold determinations in § 224.114 has been met, then within 120 days of the Director's receipt of a petition, the Director must determine whether or not a tribe is in compliance with the TERA;

(b) The Director may extend the time for determining a tribe's compliance with a TERA up to 120 days in any case in which the Director determines that additional time is necessary to evaluate the claims in the petition and the tribe's written response, if any. If the Director decides to extend the time, the Director must notify the petitioner and the tribe in writing of the extension.

§ 224.117 Must the Director make a determination of the tribe's compliance with a TERA?

(a) Yes. Upon a finding that one of the threshold determinations in § 224.115 has been met, the Director must make a determination of the tribe's compliance with a TERA within the time period in § 224.116.

(b) If the Director determines that the tribe is in compliance with the TERA, the Director will notify the tribe and the petitioner in writing;

(c) If the Director determines that the tribe is not in compliance with the TERA, the Director will notify the tribe and the petitioner in writing and, in addition, must provide the tribe:

(1) A written determination that describes the manner in which the TERA has been violated together with a written notice of the violations;

(2) Notice of a reasonable opportunity to comply with the TERA; and

(3) Notice of the tribe's opportunity for a hearing.

§ 224.118 How must the tribe respond to the Director's notice of the opportunity for a hearing?

The tribe must respond in writing to the Director's notice of the opportunity for a hearing within 20 days of receipt of the notice by requesting a hearing or declining to request a hearing. If the tribe does not respond within the time period, the Director will proceed with making a decision without further input from the tribe.

§ 224.119 What must the Director do when making a decision on a petition?

(a) The Director must issue a written decision to the tribe and the petitioner stating the basis for the decision about the tribe's compliance or noncompliance with the TERA within 30 days following:

(1) A hearing, if the tribe requested a hearing;

(2) The tribe's declining the opportunity for a hearing; or

(3) The tribe's failure to respond to the opportunity for a hearing within 20 days of the Director's written notice of the opportunity for a hearing.

(b) If the Director decides that the tribe is not in compliance with the TERA, the Director must:

(1) Include findings of fact and conclusions of law with the written decision to the tribe; and

(2) Take action to ensure compliance with the TERA.

§ 224.120 What action may the Director take to ensure compliance with a TERA?

If the Director decides that a tribe is not in compliance with a TERA, the Director may take action to ensure compliance with the TERA including:

(a) Temporarily suspending any activity under a lease, business agreement, or right-of-way until the tribe complies with the TERA; or

(b) Rescinding approval of part of the TERA, or

(c) Rescinding all of the TERA and recommending that the Secretary reassume activities under subpart G of this part.

§ 224.121 How may a tribe or a petitioner appeal the Director's decision about the tribe's compliance with the TERA?

A tribe or a petitioner, or both, may appeal the Director's decision on the petition under § 224.119 to the Principal Deputy Assistant Secretary—Indian Affairs under subpart I of this part.

Subpart F—Periodic Reviews

§ 224.130 What is the purpose of this subpart?

This subpart describes how the Secretary and a tribe will develop and perform the periodic review and evaluation required by the Act and by a TERA.

§ 224.131 What is a periodic review and evaluation?

A periodic review and evaluation is an examination the Director performs to monitor a tribe's performance of activities associated with the development of energy resources and to review compliance with a TERA. During the TERA consultation, a tribe and the Director will develop a periodic review and evaluation process that addresses the tribe's specific circumstances and the terms and conditions of the tribe's TERA. The tribe will include the agreed-upon periodic review and evaluation process in its final proposed TERA.

§ 224.132 How does the Director conduct a periodic review and evaluation?

(a) The Director will conduct a periodic review and evaluation under the TERA, in consultation with the tribe, and in cooperation with other Departmental bureaus and offices whose activities the tribe assumed or that perform activities for the tribe.

(b) The Director will communicate with the Designated Tribal Official throughout the process established by this section.

(c) During the periodic review and evaluation, the Director will:

(1) Review relevant records and documents, including transactions and reports the tribe prepares under the TERA;

(2) Conduct on-site inspections as appropriate; and

(3) Review compliance with statutes and regulations applicable to activities undertaken under the TERA.

(d) Review the effect on physical trust assets resulting from activities undertaken under a TERA.

(e) Upon written request, the tribe should provide the Director with records and documents relevant to the provisions of the TERA. In addition, the tribe should identify any information in these submitted records and documents that is confidential, commercial and financial. Specific exceptions to disclosure under the Freedom of Information Act, or other statutory protections against disclosure, may apply and preclude disclosure of this information to third parties as provided for in § 224.55.

§ 224.133 What must the Director do after a periodic review and evaluation?

After a periodic review and evaluation, the Director must prepare a written report of the results and send the report to the Designated Tribal Official.

§ 224.134 How often must the Director conduct a periodic review and evaluation?

The Director must conduct a periodic review and evaluation annually during the first 3 years of a TERA. After the third annual review and evaluation, the Secretary and the tribe may mutually agree to amend the TERA to conduct periodic reviews and evaluations once every 2 years.

§ 224.135 Under what circumstances may the Director conduct additional reviews and evaluations?

The Director may conduct additional reviews and evaluations:

(a) At a tribe's request;

(b) As part of an investigation undertaken when the tribe notifies the Director of a violation or breach;

(c) As part of an investigation undertaken because of a petition submitted under subpart E of this part;

(d) As follow-up to a determination that harm or the potential for harm to a physical trust asset, previously identified in a periodic review and evaluation, exists; or

(e) As the Secretary determines appropriate to carry out the Secretary's trust responsibilities.

Noncompliance

§ 224.136 How will the Director's report address a tribe's noncompliance?

This section applies if the Director conducts a review and evaluation or investigation of a notice of violation of Federal law or the terms of a TERA.

(a) If the Director determines that the tribe has not complied with Federal law or the terms of a TERA, the Director's written report must include a determination of whether the tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset.

(b) If the Director determines that the tribe's noncompliance may cause harm or has caused harm to a physical trust asset, the Director must also determine whether the noncompliance cause imminent jeopardy to a physical trust asset.

§ 224.137 What must the Director do if a tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset?

If, because of the tribe's noncompliance with Federal law or the terms of a TERA, the Director determines that there is harm or the potential for harm to a physical trust asset that does not rise to the level of imminent jeopardy to a physical trust asset, the Director must:

(a) Document the issue in the written report of the review and evaluation;

(b) Report the issue in writing to the tribal governing body;

(c) Report the issue in writing to the Assistant Secretary—Indian Affairs; and

(d) Determine what action, if any, the Secretary must take to protect the physical trust asset, which could include temporary suspension of the activity that resulted in non-compliance with the TERA or other applicable Federal laws or rescinding approval of all or part of the TERA.

§ 224.138 What must the Director do if a tribe's noncompliance has caused imminent jeopardy to a physical trust asset?

If the Director finds that a tribe's noncompliance with a Federal law or the terms of a TERA has caused imminent jeopardy to a physical trust asset, the Director must:

(a) Immediately notify the tribe by a telephone call to the Designated Tribal Official followed by a written notice by facsimile to the Designated Tribal Official and the tribal governing body of the imminent jeopardy to a physical trust asset. The notice must contain:

(1) A description of the tribe's noncompliance with Federal law or the terms of the TERA;

(2) A description of the physical trust asset and the nature of the imminent jeopardy to a physical trust asset resulting from the tribe's noncompliance; and

(3) An order to the tribe to cease specific conduct or take specific action deemed necessary by the Director to correct any condition that caused the imminent jeopardy to a physical trust asset.

(b) Issue a finding that the tribe's noncompliance with the TERA or a Federal law has caused imminent jeopardy to a physical trust asset.

§ 224.139 What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset?

(a) Upon receipt of a notice of imminent jeopardy to a physical trust asset, the tribe must cease specific conduct outlined in the notice or take specific action the Director orders that

is necessary to correct any condition causing the imminent jeopardy; and

(b) Within 5 days of receiving a notice of imminent jeopardy to a physical trust asset, the tribe must submit a written response to the Director that:

(1) Responds to the Director's finding that the tribe has failed to comply with a Federal law or the terms of the TERA;

(2) Responds to the Director's finding of imminent jeopardy to a physical trust asset;

(3) Describes the status of the tribe's cessation of specific conduct or specific action the tribe has taken to correct any condition causing imminent jeopardy to a physical trust asset; and

(4) Describes what further actions, if any, the tribe proposes to take to correct any condition, cited in the notice, causing imminent jeopardy to a physical trust asset.

§ 224.140 What must the Secretary do if the tribe fails to respond to or does not comply with the Director's order?

If the tribe does not respond to or does not comply with the Director's order under § 224.138(a)(3), the Secretary may take any actions the Secretary deems appropriate to protect the physical trust asset, which may include the immediate reassumption of all activities the tribe assumed under the TERA. The procedures in subpart G of this part do not apply to reassumption under this section.

§ 224.141 What must the Secretary do if the tribe responds to the Director's order?

(a) If the tribe responds in a timely manner to the Director's order under § 224.138, the Secretary must:

(1) Evaluate the tribe's response;

(2) Determine whether or not the tribe has complied with the TERA and the Federal law cited in the notice; and

(3) If the Secretary determines, after reviewing the tribe's response, that the tribe has not complied with the TERA or with a Federal law, the Secretary will determine whether the noncompliance caused imminent jeopardy to a physical trust asset.

(b) If the Secretary determines that the tribe's noncompliance has caused imminent jeopardy to a physical trust asset, the Secretary may:

(1) Order the tribe to take any action the Secretary deems necessary to comply with the TERA or Federal law and to protect the physical trust asset; or

(2) Take any action the Secretary deems necessary to protect the physical trust asset, including reassumption under subpart G of this part.

(c) If the Secretary determines, after reviewing the tribe's response, that the tribe has complied with the TERA and with Federal law, the Secretary will withdraw the Director's order.

(d) The Secretary must base a finding of imminent jeopardy to a physical trust asset on the tribe's non-compliance with a TERA or violation of a Federal law.

Subpart G—Reassumption

§ 224.150 What is the purpose of this subpart?

This subpart explains when and how the Secretary may reassume all activities included within a TERA without the consent of the tribe.

§ 224.151 When may the Secretary reassume activities?

Upon issuing a written finding of imminent jeopardy to a physical trust asset, the Secretary may reassume activities under a TERA in accordance with this subpart. The Secretary may also reassume activities approved under a TERA in response to a petition from an interested party under subpart E of this part. Only the Secretary or the Assistant Secretary—Indian Affairs may reassume activities under a TERA.

§ 224.152 Must the Secretary always reassume the activities upon a finding of imminent jeopardy to a physical trust asset?

(a) The Secretary may take whatever actions the Secretary deems necessary to protect the physical trust asset. At the discretion of the Secretary, these actions may include reassumption of the activities a tribe assumed under a TERA.

(b) If the tribe does not respond to or does not comply with the Director's order under § 224.138(a)(3), the Secretary must immediately reassume all activities the tribe assumed under the TERA. The notice procedures in this subpart will not apply to such immediate reassumption.

Notice of Intent To Reassume

§ 224.153 Must the Secretary notify the tribe of an intent to reassume the authority granted?

If the Secretary determines under § 224.152 that reassumption is necessary to protect the physical trust asset, the Secretary will issue a written notice to the tribal governing body of the Secretary's intent to reassume.

§ 224.154 What must a notice of intent to reassume include?

A notice of intent to reassume must include:

(a) A statement of the reasons for the intended reassumption, including, as applicable, a copy of the Secretary's written finding of imminent jeopardy to a physical trust asset;

(b) A description of specific measures that the tribe must take to correct the violation and any condition that caused the imminent jeopardy to a physical trust asset;

(c) The time period within which the tribe must take the measures to correct the violation of the TERA and any condition that caused the imminent jeopardy to a physical trust asset; and

(d) The effective date of the reassumption, if the tribe does not meet the requirements in paragraphs (b) and (c) of this section.

§ 224.155 When must a tribe respond to a notice of intent to reassume?

The tribe must respond to the Director in writing by mail, facsimile, or overnight express within 5 days of receiving the Secretary's notice of intent to reassume. If sent by mail, the tribe must send the response by certified mail, with return receipt requested. The Director will consider the date of the written response as the date it is postmarked.

§ 224.156 What information must the tribe's response to the notice of intent to reassume include?

The tribe's response to the notice of intent to reassume must state that:

(a) The tribe has complied with the Secretary's requirements in the notice of intent to reassume;

(b) The tribe is taking specified measures to comply with the Secretary's requirements, and when the tribe will complete such measures, if the tribe needs more than 5 days to do so; or

(c) The tribe will not comply with the Secretary's requirements.

§ 224.157 How must the Secretary proceed after receiving the tribe's response?

(a) If the Secretary determines that the tribe's proposed or completed actions to comply with the Secretary's requirements are adequate to correct the violation of the TERA or Federal law and any condition that caused the imminent jeopardy, the Secretary will:

(1) Notify the tribe of the adequacy of its response in writing; and

(2) Terminate the reassumption proceedings in writing.

(b) If the Secretary determines that the tribe's proposed or completed actions to comply with the Secretary's requirements are not adequate, then the Secretary will issue a written notice of reassumption.

§ 224.158 What must the Secretary include in a written notice of reassumption?

The written notice of reassumption must include:

(a) A description of the authorities the Secretary is reassuming;

(b) The reasons for the determination under § 224.157(b);

(c) The effective date of the reassumption; and

(d) A statement that the decision is a final agency action and is subject to judicial review.

§ 224.159 How will reassumption affect valid existing rights or lawful actions taken before the effective date of the reassumption?

Reassumption will not affect valid existing rights that vested before the effective date of the reassumption or lawful actions the tribe and the Secretary took before the effective date of the reassumption.

§ 224.160 How will reassumption affect a TERA?

Reassumption of a TERA applies to all of the authority and activities assumed under a TERA. Upon reassumption, the tribe must also return all Departmental resources transferred under the TERA and any relevant records and documents to the Secretary.

§ 224.161 How may reassumption affect the tribe's ability to enter into a new TERA or to modify another TERA to administer additional activities or to assume administration of activities that the Secretary previously reassumed?

Following reassumption, a tribe may submit a request to enter into a new TERA or modify another TERA to administer additional activities, or assume administration of activities that the Secretary previously reassumed. In reviewing a subsequent tribal request, however, the Secretary may consider the fact that activities were reassumed and any change in circumstances supporting the tribe's request.

Subpart H—Rescission

§ 224.170 What is the purpose of this subpart?

This subpart explains the process and requirements under which a tribe may rescind a TERA and therefore return to the Secretary all authority and activities assumed under that TERA.

§ 224.171 Who may rescind a TERA?

Only a tribe may rescind a TERA.

§ 224.172 May a tribe rescind only some of the activities subject to a TERA while retaining a portion of those activities?

No. A tribe may only rescind a TERA in its entirety, including the authority to approve leases, business agreements and grant rights-of-way for specific energy resource development, not some of the authority or activities subject to the TERA.

§ 224.173 How does a tribe rescind a TERA?

To rescind a TERA, a tribe must submit to the Secretary a written tribal resolution or other official action of the tribe's governing body approving the voluntary rescission of the TERA. Upon rescission, the tribe must also return all Departmental resources transferred under the TERA and any relevant records and documents.

§ 224.174 When does a voluntary rescission become effective?

A voluntary rescission becomes effective on the date specified by the Secretary, provided that the date is no more than 90 days after the Secretary receives the tribal resolution or other official action the tribe submits under § 224.173.

§ 224.175 How will rescission affect valid existing rights or lawful actions taken before the rescission?

Rescission does not affect valid existing rights that vested before the effective date of the rescission or lawful actions the tribe and the Secretary took before the effective date of the rescission.

Subpart I—General Appeal Procedures

§ 224.180 What is the purpose of this subpart?

The purpose of this subpart is to explain who may appeal Departmental decisions or inaction under this part and the initial administrative appeal processes, and general administrative appeal processes, including how 25 CFR Part 2 and 43 CFR Part 4 apply, and the effective dates for appeal decisions.

§ 224.181 Who may appeal Departmental decisions or inaction under this part?

The following persons or entities may appeal Department decisions or inaction under this part:

(a) A tribe that is adversely affected by a decision of or inaction by an official of the Department of the Interior under this part;

(b) A third party who has entered into a lease, right-of-way, or business agreement with a tribe under an approved TERA and is adversely affected by a decision of, or inaction by a Department official under this part; or

(c) An interested party who is adversely affected by a decision of or inaction by the Director under subpart E of this part, provided that the interested party may appeal only those issues raised in its prior participation under subpart E of this part and may not appeal any other decision rendered or inaction under this part.

§ 224.182 What is the Initial Appeal Process?

The initial appeal process is as follows:

(a) Within 30 days of receiving an adverse decision by the Director or within 30 days after the time period within which the Director is required to act under subpart E, a party that may appeal under this subpart may file an appeal to the Principal Deputy Assistant Secretary-Indian Affairs;

(b) Within 60 days of receiving an appeal, the Principal Deputy Assistant Secretary—Indian Affairs will review the record and issue a written decision on the appeal; and

(c) Within 7 days of a decision by the Principal Deputy Assistant Secretary—Indian Affairs, the Secretary will provide a written copy of the decision to the tribe and other participating parties.

§ 224.183 What other administrative appeals processes also apply?

The administrative appeal processes in 25 CFR Part 2 and 43 CFR Part 4, subject to the limitations in § 224.184, apply to:

(a) An interested party's appeal from an adverse decision or inaction by the Principal Deputy Assistant Secretary—Indian Affairs under § 224.182; and

(b) An appeal by a tribe or a person or entity that has entered into a lease, business agreement, or right-of-way from an adverse decision by or the inaction of a Departmental official taken under this part.

§ 224.184 How do other administrative appeals processes apply?

The administrative appeals process in 25 CFR Part 2 and 43 CFR Part 4 are modified, only as they apply to appeals under this part, as set forth in this section.

(a) The definition of interested party in 25 CFR Part 2 and as incorporated in 43 CFR Part 4 does not apply to this part.

(b) The right of persons or entities other than an appealing party to participate in appeals under 25 CFR Part 2 and 43 CFR Part 4 does not apply to this part, except as permitted under paragraph (c) of this section.

(c) The only persons or entities, other than appealing parties, under § 224.181(a) to (c), who may participate in an appeal under this part are:

(1) The Secretary, if an appeal is taken from a decision of the Director or Principal Deputy Assistant Secretary—Indian Affairs;

(2) A tribe, which may intervene, appear as an amicus curiae, or otherwise appear in any appeal taken under this

part by a person or entity who has entered into a lease, business agreement, or right-of-way with the tribe or by an interested party under this part; or

(3) A person or entity that has entered into a lease, business agreement, or right-of-way with a tribe, may intervene, appear as an amicus curiae, or otherwise appear in any appeal taken under this part by the tribe or by an interested party under this part.

(d) The Secretary does not have an obligation to provide notice and service upon non-appealing persons as provided in 25 CFR Part 2 and 43 CFR Part 4. The only exception to this principle is that notice and service of all documents must be served consistent with the requirements of 25 CFR Part 2 and 43 CFR Part 4 on those persons or entities identified in paragraph (c) of this section.

§ 224.185 When are decisions under this part effective?

Decisions under subpart I are effective as follows:

(a) Decisions of the Secretary disapproving a final proposed TERA or a revised final proposed TERA under subpart C of this part, a finding of imminent jeopardy to a physical trust asset under subpart F of this part, and decisions by the Secretary or the Assistant Secretary—Indian Affairs to reassume activities under subpart G of this part are final for the Department. These decisions and findings are effective upon issuance.

(b) Decisions under this part, other than those in paragraph (a) of this section, that adversely affect a tribe and for which an appeal is pending are not final for the Department and are not effective while the appeal is pending, unless:

(1) The tribe had an opportunity for a hearing before the decision was issued;

(2) The tribe had a reasonable amount of time to comply with the TERA after the decision was issued; and

(3) The Interior Board of Indian Appeals (Board), the Secretary, or Assistant Secretary—Indian Affairs issued a written decision that, notwithstanding a reasonable period given the tribe to comply with the TERA, the tribe has failed to take the actions necessary to comply with the TERA.

(c) All other decisions rendered by the Board or the Assistant Secretary—Indian Affairs in an appeal from a Director's decision under subparts E, F, or G of this part are effective when issued.

[FR Doc. E8–4301 Filed 3–7–08; 8:45 am]

BILLING CODE 4310–4M–P

Federal Register

Monday,
March 10, 2008

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–168745–03]

RIN 1545–BE18

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, a notice of public hearing, and withdrawal of previously proposed regulations.

SUMMARY: This document contains proposed regulations that explain how section 263(a) of the Internal Revenue Code (Code) applies to amounts paid to acquire, produce, or improve tangible property. The proposed regulations clarify and expand the standards in the current regulations under section 263(a), as well as provide some bright-line tests (for example, a de minimis rule for acquisitions). The proposed regulations will affect all taxpayers that acquire, produce, or improve tangible property. This document also provides a notice of public hearing on the proposed regulations and withdraws the proposed regulations published in the **Federal Register** on August 21, 2006 (71 FR 161).

DATES: Written or electronic comments must be received by June 9, 2008. Outlines of topics to be discussed at the public hearing scheduled for June 24, 2008, at 10 a.m., must be received by June 3, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–168745–03), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–168745–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–168745–03). The public hearing will be held in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Merrill D. Feldstein or Mon L. Lam, (202) 622–4950; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2006, the IRS and Treasury Department published in the **Federal Register** (71 FR 161) proposed amendments to the regulations under section 263(a) (2006 proposed regulations) relating to amounts paid to acquire, produce, or improve tangible property. The IRS and Treasury Department received numerous written comments. A public hearing was held on December 19, 2006. After considering the comment letters and the statements at the public hearing, the IRS and Treasury Department are withdrawing the 2006 proposed regulations and are proposing new regulations.

Summary of Comments and Explanation of Provisions

I. Overview

These new proposed regulations include many of the provisions contained in the 2006 proposed regulations, including the proposed format changes in which § 1.263(a)–1 provides general rules for capital expenditures, § 1.263(a)–2 provides rules for amounts paid for the acquisition or production of tangible property, and § 1.263(a)–3 provides rules for amounts paid for the improvement of tangible property. However, these new proposed regulations provide many additional rules that were not included in the 2006 proposed regulations. For example, these new proposed regulations provide a definition of materials and supplies under § 1.162–3 (including a special 12-month rule and a $100 de minimis rule), a book conformity de minimis rule for acquisitions of units of property under § 1.263(a)–2, a safe harbor for routine maintenance under § 1.263(a)–3, and an optional simplified method for regulated taxpayers under § 1.263(a)–3. Additionally, these new proposed regulations provide significant changes to the rules relating to unit of property, restorations, and allow for industry-specific repair allowance methods in future Internal Revenue Bulletin guidance. These new proposed regulations generally will apply to taxable years beginning on or after the date that final regulations are published in the **Federal Register**.

II. Withdrawal and Re-Proposal of Regulations

In addition to providing specific comments, many commentators suggested that, given the broad scope and effect of the regulations and the numerous comments received on the 2006 proposed regulations, consideration should be given to re-proposing the regulations in their entirety. This suggestion has been adopted and the 2006 proposed regulations are withdrawn and replaced with these new proposed regulations.

III. Materials and Supplies Under § 1.162–3

Various commentators thought that the 2006 proposed regulations failed to fully address the relationship between the rules for capitalization of tangible property under section 263(a) and the materials and supplies rules provided in § 1.162–3 of the current regulations because the 2006 proposed regulations did not provide special rules for the interaction between the two provisions. Specifically, commentators noted that under the 2006 proposed regulations, tangible property with a useful life of 12 months or less was not treated as a material and supply, which treatment was inconsistent with existing authorities, particularly with regard to the timing of when to deduct amounts paid to acquire the property with a useful life of 12 months or less. Commentators pointed out that the 2006 proposed regulations were inconsistent with § 1.162–3 and would create uncertainty with regard to which provision should be applied to which property. In response, the IRS and Treasury Department decided to revise §§ 1.162–3 and 1.263(a)–2 to provide clear and consistent treatment for those items that traditionally have been considered to be materials and supplies and to provide distinct, but coordinated, treatment for those items that should be addressed under section 263(a).

The new proposed regulations provide additional guidance under § 1.162–3 with respect to the definition of materials and supplies. Specifically, the proposed rules define a material and supply as tangible property that (a) is not a unit of property, (b) is a unit of property with an economic useful life of 12 months or less, (c) is a unit of property that costs $100 or less, or (d) is identified as a material and supply in future guidance.

Under the existing regulations, the costs of non-incidental materials and supplies are deducted as the materials and supplies are used or consumed, and the costs of incidental materials and

supplies are deducted as the costs are incurred. These new proposed regulations retain this treatment of materials and supplies, except with respect to rotable and temporary spare parts. These new proposed regulations provide that rotable or temporary spare parts treated as materials and supplies will be considered used or consumed in the taxable year in which the taxpayer disposes of the parts. This rule prevents taxpayers from prematurely deducting the cost of a unit of property by systematically replacing components with rotable spare parts. The IRS and Treasury Department anticipate that taxpayers with rotable or temporary spare parts that are not discarded after their original use generally will prefer to capitalize their costs and treat those parts as depreciable assets. These new proposed regulations provide for an election to capitalize these costs.

Taxpayers should recognize that the used or consumed standard for non-incidental materials and supplies generally is met later than the placed in service standard used for depreciation. In addition, taxpayers are reminded that after a material or supply is used or consumed, capitalization of the material or supply cost to another property may be required. For example, amounts paid for materials and supplies used in the production of inventory or a self-constructed asset generally are required to be capitalized under section 263A. Similarly, amounts paid to produce materials and supplies generally are required to be capitalized as part of the production costs of the materials and supplies. Nothing in these new proposed regulations is intended to change this treatment.

First, these new proposed regulations provide that property that is not a unit of property as defined in § 1.263(a)–3 will be considered a material and supply. In general, this definition is intended to describe spare and replacement parts and is consistent with the current characterization of these items.

Second, these new proposed regulations provide that property that has an economic useful life of 12 months or less will be considered a material and supply. Commentators requested clarification concerning the application of the 12-month rule provided in the 2006 proposed regulations. For purposes of applying the 12-month rule, these new proposed regulations generally adopt the economic useful life definition in § 1.167(a)–1(b) and provide that, for purposes of these new proposed material and supplies regulations, the measurement period for economic useful life begins when the item is first used or consumed in the taxpayer's trade or business. Therefore, the time prior to when an item is used or consumed is not taken into consideration in determining the economic useful life of the asset for these new proposed regulations, notwithstanding the fact that the item may have been placed in service (ready and available for its intended use) for depreciation.

In addition, these new proposed regulations provide a special economic useful life test under the 12-month rule for taxpayers with applicable financial statements (AFS). Under this rule, taxpayers with AFS are required to determine the economic useful life in a manner consistent with the economic useful life used for purposes of determining depreciation in the books and records supporting their AFS. An exception is provided if a taxpayer does not assign a useful life to certain property in its AFS (for example, the item is currently expensed in the taxpayer's AFS because it is considered *de minimis*).

The 2006 proposed regulations did not provide a *de minimis* rule for the acquisition or production of property but requested comments on whether a *de minimis* rule should be adopted. Commentators generally agreed that the regulations should include a *de minimis* rule but varied on how that rule should be structured.

Third, these new proposed regulations provide a $100 *de minimis* rule within the definition of materials and supplies. Materials and supplies include a unit of property that has a production or acquisition cost of $100 or less, without regard to the treatment of the item in the taxpayer's financial statements. Allowing small items to be treated as materials and supplies resolves uncertainty with respect to whether those items represent a depreciable asset or a material and supply, and $100 is a low enough threshold to alleviate concerns about the potential distortion of income. However, treating a small unit of property as a material and supply may affect the timing of the deduction for the material and supply cost because expensing an amount paid for a non-incidental material and supply will only occur in the period in which the item is used or consumed.

Various commentators pointed out that taxpayer burden may be reduced by allowing taxpayers to capitalize amounts paid for items that otherwise would qualify as materials and supplies and treat the items as depreciable assets. For example, many taxpayers currently treat rotable spare parts as capital expenditures depreciable over the life of the unit of property in which the rotables are used. See Rev. Rul. 69–200 (1969–1 CB 60). See § 601.601(d)(2)(ii)(*b*).

Under these new proposed regulations, taxpayers may elect to treat an amount paid for a material and supply as a capital expenditure. In general, the election is made separately for each material and supply and is revocable only with the consent of the Commissioner. The election is made by capitalizing the cost of the material and supply in the year the cost is incurred and beginning depreciation of the item in the year it is placed in service.

IV. Repairs under § 1.162–4

The 2006 proposed regulations revised § 1.162–4 (the repair rules), to provide rules consistent with the improvement rules under § 1.263(a)–3 of the 2006 proposed regulations. Commentators expressed concern that the proposed changes would result in challenges to the deductibility of costs that the IRS has long agreed with taxpayers are deductible. The IRS and Treasury Department do not think that the proposed change to § 1.162–4 creates a burden of proof higher than that which exists under current law or requires capitalization of costs that are not required to be capitalized under current law. Therefore, these new proposed regulations do not propose any specific changes to the rules proposed in the 2006 proposed regulations. However, a routine maintenance safe harbor is provided in these new proposed regulations in § 1.263(a)–3.

V. Professional Expenses Under § 1.162–6

The existing regulations under § 1.162–6 provide rules for professional expenses. These new proposed regulations propose to remove § 1.162–6. In general, the treatment of the items listed in § 1.162–6 is adequately addressed in these new proposed regulations and other existing regulations. The proposed removal of § 1.162–6 is not intended to result in any substantive changes in the treatment of professional expenses.

VI. Capital Expenditures

A. Amounts Paid To Sell Property

The 2006 proposed regulations provided rules for the capitalization of selling expenses, except in the case of dealers, under § 1.263(a)–1. The 2006 proposed regulations included an example that required the capitalization

of advertising costs as a selling expense that must be offset against the sale proceeds. Various commentators questioned this treatment of advertising costs. In general, advertising costs are not capital expenditures. Therefore, these new proposed regulations retain the general rule but remove the references to advertising costs provided in the 2006 proposed regulations and update the examples accordingly.

B. Interests in Land

The 2006 proposed regulations did not provide a specific capitalization rule for amounts paid to acquire or create intangible interests in land. The 2006 proposed regulations specifically requested comments on this issue, but no comments were received. These new proposed regulations provide that amounts paid to acquire or create interests in land, such as easements, life estates, mineral interests, timber rights, zoning variances, or other interests in land, are examples of capital expenditures. Comments are specifically requested on this proposed rule.

VII. Amounts Paid To Acquire or Produce Tangible Property

The 2006 proposed regulations provided rules for the capitalization of amounts paid to acquire or produce tangible property under § 1.263(a)–2. These new proposed regulations generally retain the same format, but make some modifications to the 2006 proposed regulations. For example, modifications have been made to clarify the interaction of § 1.263(a)–2 of these new proposed regulations with the materials and supplies rules under § 1.162–3. Significant modifications and clarifications are discussed further in this preamble.

A. Definition of Produce

Commentators asked whether the term ''produce'' as used in the 2006 proposed regulations had the same meaning as the term ''produce'' under section 263A. These new proposed regulations clarify that the definition of the term produce for purposes of § 1.162–3 and § 1.263(a)–2 generally is the same as the definition of the term produce for section 263A purposes. The sole difference is that the term ''improve'' is not included in § 1.162–3 and § 1.263(a)–2 because ''improve'' under section 263A is specifically defined in § 1.263(a)–3 of these new proposed regulations, relating to the improvement of tangible property.

B. Transaction Costs

The 2006 proposed regulations generally required a taxpayer to capitalize amounts paid to facilitate the acquisition of real or personal property, and included a list of typical transaction costs. Commentators suggested that with respect to the rules requiring the capitalization of facilitative transaction costs, an exception should be provided for transaction costs for pre-decisional investigatory costs, similar to the exception provided with respect to certain intangibles in § 1.263(a)–4(e)(1)(iii) (creation of certain contract rights) and § 1.263(a)–5(e) (acquisition of a trade or business). These new proposed regulations provide a general rule similar to the rules in the intangibles regulations requiring that taxpayers capitalize all costs that facilitate an acquisition of tangible property, including the costs of investigating the acquisition, but adopt the commentators' suggestion in part by providing an exception for certain costs incurred in the investigation of real property acquisitions. The IRS and Treasury Department think it is appropriate to provide an exception for real property acquisitions because these types of transactions most often raise the issue of whether the investigatory costs are deductible business expansion costs rather than capital expenditures to acquire a specific asset. The exception provides that costs relating to activities performed in the process of determining whether to acquire real property and which real property to acquire generally are deductible pre-decisional costs. Under this exception, capitalization will not be required for certain pre-decisional investigative activities, such as marketing studies, that are not specifically identified in these regulations as being inherently facilitative. These new proposed regulations provide that inherently facilitative costs must be capitalized and list the costs, such as transportation and shipping costs, that are inherently facilitative.

A commentator pointed out that section 263A does not apply to acquisitions of property that are not intended for resale, and thus, taxpayers should not be required to capitalize overhead costs to this type of property. These new proposed regulations address this comment by providing a simplifying convention for employee compensation and overhead costs similar to the rules provided for intangible property. However, the new proposed regulations reiterate that section 263A does apply to the production of real or personal property. Section 263A contains rules for certain costs incurred prior to production.

Under current law, if a taxpayer engages in multiple separate and distinct transactions, the taxpayer may allocate transaction costs to the separate transactions and recover the allocable transaction costs as each distinct transaction is abandoned. *Sibley, Lindsay & Curr Co.* v. *Commissioner*, 15 T.C. 106, 110 (1950), acq., 1951–1 CB 3. See § 601.601(d)(2)(ii)(*b*). However, if the transactions are viewed as alternatives, only one of which the taxpayer can complete, the courts have held that the taxpayer must capitalize all the transaction costs to the one transaction ultimately completed. *United Dairy Farmers, Inc.* v. *United States*, 267 F.3d 510 (6th Cir. 2001); *Nicolazzi* v. *Commissioner*, 79 T.C. 109 (1982), aff'd, 722 F.2d 324 (6th Cir. 1983). To avoid the difficulty inherent in administering this rule, including ascertaining the intent of the taxpayer, the new proposed regulations provide a more objective rule. This rule allows taxpayers to allocate inherently facilitative costs among the separate and distinct properties considered, regardless of the taxpayer's ultimate intent or plan. The taxpayer capitalizes the allocable transaction costs to each property, including properties not acquired, and recovers the costs as appropriate under the applicable provision of the Code (for example, section 165, 167, or 168). Examples are provided to demonstrate the application of these rules.

In addition, a commentator noted that the rule contained in the 2006 proposed regulations with respect to costs incurred prior to placing property in service is really a rule for acquisition costs, not improvement costs. The IRS and Treasury Department agree that activities occurring prior to placing the property in service are conceptually more related to the acquisition of the property than to the improvement of property. Therefore, these new proposed regulations move to the acquisition cost section of these regulations the requirement to capitalize amounts paid for work performed prior to placing property in service.

C. De minimis rule

The 2006 proposed regulations did not provide a specific de minimis rule for the acquisition or production of property, but the preamble provided a detailed proposal of what might be an appropriate de minimis rule and requested comments from taxpayers on this issue. Numerous comments supported the adoption of a de minimis rule to the extent such a proposal would not alter the current understandings between taxpayers and examining agents with respect to what type of transactions are considered de minimis

on examination for purposes of evaluating risk. Therefore, to reduce burden and provide simplification, these new proposed regulations provide a de minimis rule. With respect to the concerns raised by commentators as to the adoption of a de minimis rule, the IRS and Treasury Department want to make clear that the adoption of such a rule is not intended to alter the general risk analysis currently employed by examining agents. Therefore, the de minimis rule proposed in these regulations should not affect any current understandings between examining agents and taxpayers with respect to the size and character of transactions that will be the focus of examinations.

The proposed de minimis rule is based primarily on a qualifying taxpayer's financial statement standards. A qualifying taxpayer is a taxpayer that: (a) Has an AFS, (b) has written accounting procedures for the expensing of de minimis items, and (c) recognizes de minimis costs as expenses on its AFS. Under the rule provided in these new proposed regulations, a qualifying taxpayer can use the de minimis standard adopted in its AFS to the extent the AFS de minimis standard does not result in a distortion of income. Although commentators varied regarding whether it is appropriate to require conformity with AFS to qualify for a de minimis rule, the IRS and Treasury Department think that it provides simplification and reduces burden only to allow deductions for de minimis amounts paid for property (other than the $100 rule for materials and supplies) that are already being deducted for AFS purposes.

The primary concern with the adoption of a de minimis rule is that expensing items under a de minimis rule may not clearly reflect income under section 446, particularly for aggregate or bulk purchases of *de minimis* items. In general, the IRS and Treasury Department recognize that accounting for an item using generally accepted accounting principles will not result in a distortion of income. Nonetheless, a distortion of income standard has been adopted in an effort to avoid intentional manipulations of the de minimis rule. These new proposed regulations provide a safe harbor in which the use of an AFS de minimis standard will be deemed not to distort income. Specifically, the safe harbor provides that an amount deducted under the AFS de minimis rule for the taxable year will be deemed not to distort income if that amount, added to the amounts deducted in the taxable year as materials and supplies for units of property costing $100 or less, is less than or equal to the lesser of (i) 0.1 percent of the taxpayer's gross receipts for the taxable year, or (ii) 2 percent of the taxpayer's total depreciation and amortization for the taxable year as determined in its AFS. The safe harbor provided in these new proposed regulations is based upon percentages and comparisons provided in case law. See *Alacare Home Health Services, Inc.* v. *Commissioner*, T.C. Memo. 2001–149; *Cincinnati, New Orleans & Tex. Pac. Ry. Co.* v. *United States*, 424 F.2d 563 (Ct. Cl. 1970). This safe harbor is not intended to be used in other contexts as a bright-line rule of an amount that distorts income. Whether amounts above the safe harbor result in a distortion of income depends upon the taxpayer's facts and circumstances.

These new proposed regulations also provide that gain on the sale or disposition of property accounted for under the de minimis rule is not treated as gain resulting from the sale or disposition of a capital asset under section 1221 or as property used in the trade or business under section 1231. These new proposed regulations also clarify that property accounted for under the de minimis rule is not a material or supply under § 1.162–3.

Moreover, these new proposed regulations provide that taxpayers may elect to capitalize items that might otherwise be within the scope of the de minimis rule. In general, this election to capitalize is made separately for each asset by treating the amount paid as a capital expenditure on the tax return.

These new proposed regulations also make a conforming change to the regulations under section 263A to ensure that amounts paid for property produced by the taxpayer also qualify under the de minimis rule, because there is no basis for distinguishing between acquired and produced property for this purpose. This change is provided in § 1.263A–1(b)(14) of the these new proposed regulations. The rule provides that the cost of property to which a taxpayer properly applies the de minimis rule contained in § 1.263(a)–2(d)(4) of these new proposed regulations (including the requirement that it not distort income) is not required to be capitalized under section 263A as a separate unit of property, but may be required to be capitalized as a cost incurred by reason of the production of other property. This change is necessary because without a conforming change to section 263A, property produced by the taxpayer that qualified under the de minimis rule would be capitalized under section 263A despite the de minimis rule under section 263(a).

These new proposed regulations do not impose any specific record keeping requirements for the use of the *de minimis* rule. However, under section 6001, taxpayers are required to keep books and records sufficient to establish their eligibility to use the de minimis rule. Specifically, taxpayers must maintain books and records reasonably sufficient to determine (1) the total amounts paid and deducted as materials and supplies pursuant to § 1.162–3(d)(1)(iii) of these new proposed regulations; (2) the total amounts paid and not capitalized pursuant to § 1.263(a)–2(d)(4)(i) of these new proposed regulations; (3) the computation of the safe harbor amount provided by § 1.263(a)–2(d)(4)(iii) of these new proposed regulations; (4) that income has not been distorted by the aggregate of the deductions under §§ 1.162–3(d)(1)(iii) and 1.263(a)–2(d)(4)(i) of these new proposed regulations if the aggregate amount exceeds the safe harbor amount determined pursuant to § 1.263(a)–2(d)(4)(iii) of these new proposed regulations; and (5) that the requirements of § 1.263(a)–2(d)(4)(i)(A)–(C) of these new proposed regulations have been met.

VIII. Improvements

In general, these proposed regulations are intended to reduce controversy and provide clarity on how to determine whether an amount paid must be capitalized under section 263(a) as an improvement cost. Consistent with that intent, the 2006 proposed regulations contained rules with respect to improvements, including rules to determine whether an amount paid results in a material increase in value or prolonged useful life. As described below, these regulations modify the rules set forth in the 2006 proposed regulations to reflect comments received. While these proposed regulations attempt to provide more certainty in an area of law that currently requires a subjective analysis, the IRS and Treasury Department request comments on whether the improvement rules in these regulations are consistent with the overriding goal of providing clarity and certainty in this area.

The IRS and Treasury Department received numerous comments regarding the improvement rules provided in the 2006 proposed regulations. Many of the comments received included a general request that consideration be given to providing more bright-line rules and clarifying definitions as well as providing greater consistency with other

provisions of the Code. The rules contained in these new proposed regulations attempt to address these concerns.

Section 1.263(a)–3 of the 2006 proposed regulations provided that taxpayers are required to capitalize amounts paid to improve a unit of property. Under the general rule in the 2006 proposed regulations, a unit of property is improved if the amounts paid (i) materially increase the value of the unit of property; or (ii) restore the unit of property. Under the 2006 proposed regulations, amounts paid to adapt a unit of property to a new or different use were considered to materially increase the value of a unit of property. The 2006 proposed regulations also contained rules for determining the appropriate unit of property.

These new proposed regulations remove the new or different use standard from the material increase in value rules and provide a separate category for new or different use. Additionally, the material increase in value standard has been renamed the ''betterment'' standard because the betterment standard more closely reflects the manner in which section 263(a) has been interpreted and applied under current law. Therefore, these new proposed regulations identify three categories of costs that result in an improvement to property. Taxpayers under the new proposed regulations must capitalize amounts paid that:

(i) Result in a betterment to a unit of property;

(ii) Restore a unit of property; or

(ii) Adapt a unit of property to a new or different use.

These new proposed regulations continue to include rules for defining the unit of property to be used in making these determinations.

The 2006 proposed regulations did not prescribe a plan of rehabilitation doctrine as traditionally described in the case law. That judicially-created doctrine provides that a taxpayer must capitalize otherwise deductible repair costs if they are incurred as part of a general plan of rehabilitation to the property. See *Norwest Corp.* v. *Commissioner*, 108 T.C. 265 (1997); *Moss* v. *Commissioner*, 831 F.2d 833 (9th Cir. 1987); *United States* v. *Wehrli*, 400 F.2d 686 (10th Cir. 1968). Commentators requested that the regulations specifically state that the plan of rehabilitation doctrine either is eradicated or is limited to clearly defined circumstances.

Section 263A requires that all direct costs of an improvement and all indirect costs that directly benefit or are incurred by reason of the improvement must be capitalized. See section 263A(b), which states that section 263A applies to real or tangible property produced by the taxpayer, and section 263A(g)(1), which states that the definition of ''produce'' includes improve. See also § 1.263A–1(e), which requires the capitalization of direct costs and of all indirect costs that directly benefit or are incurred by reason of the performance of production activities. Section 263A, therefore, requires a taxpayer to capitalize otherwise deductible repair costs as part of an improvement if the taxpayer improves a unit of property and the otherwise deductible repair costs directly benefit or are incurred by reason of the improvement to the property. Thus, section 263A has eliminated the need for a plan of rehabilitation doctrine to determine the allocable costs that must be capitalized as part of an improvement. Although some commentators requested that the circumstances in which otherwise deductible repair costs must be capitalized as part of an improvement be limited, for example, to property that is totally dysfunctional and unsuitable for its intended purpose, there is no authority for doing so because section 263A specifically applies to improvements. The legislative history to the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085) also indicates that Congress intended section 263A to apply to improvements to property. See, for example, S. Rep. No. 99–313, 99th Cong., 2d Sess. 133–152 (1986), which states that the uniform capitalization rules will apply to assets or improvements to assets constructed by a taxpayer for its own use in a trade or business or in an activity engaged in for profit, and that the rules are not intended to apply to expenditures properly treated as repair costs under present law that do not relate to the manufacture, remanufacture, or production of property.

Section 263A does not require otherwise deductible repair costs to be capitalized if the repairs do not directly benefit or are not incurred by reason of a production activity (for example, an improvement). The judicially-created plan of rehabilitation doctrine, however, has been cited to require capitalization of otherwise deductible repair costs solely because the taxpayer has a plan (written or otherwise) to perform periodic repairs or maintenance, or solely because the taxpayer performs several repairs to the same property at one time even though the property is not improved. As stated in the preamble to the 2006 proposed regulations, the IRS and Treasury Department do not think this characterization is appropriate. These new proposed regulations specifically provide that repairs that are made at the same time as an improvement, but that do not directly benefit or are not incurred by reason of the improvement, are not required to be capitalized under section 263(a). These new proposed regulations do not prescribe a plan of rehabilitation doctrine. Therefore, when these new proposed regulations are finalized, the judicially-created plan of rehabilitation doctrine will be obsolete, particularly with regard to the assertion that the doctrine transforms otherwise deductible repair costs into capital improvement costs solely because the repairs are performed at the same time as an improvement, or are pursuant to a maintenance plan, even though the repairs do not improve the property under § 1.263(a)–3. However, section 263A continues to require a taxpayer to capitalize otherwise deductible repair costs if the taxpayer improves a unit of property and the otherwise deductible repair costs directly benefit or are incurred by reason of the improvement to the property.

A. Unit of Property

The 2006 proposed regulations began with an initial unit of property determination of all components that are functionally interdependent to define the largest unit of property as a starting point for the analysis. Special rules applied to buildings and their structural components and to property used in certain regulated industries; network assets were excluded from the definition of unit of property. The unit of property determination for other personal property employed a facts and circumstances test based on the application of four exclusive factors—(1) marketplace treatment; (2) industry practice and financial accounting; (3) treatment as a rotable spare part; and (4) functional use. An overriding rule required taxpayers to treat property as a unit of property for purposes of section 263 if the taxpayer did so for any other Federal income tax purpose.

The IRS and Treasury Department received multiple comments on the definition of a unit of property provided in the 2006 proposed regulations. The commentators generally expressed dissatisfaction with the unit of property rules provided in the 2006 proposed regulations, particularly with respect to the regulated industry rules and the rule for rotable spare parts. Commentators generally agreed with the unit of property rules for a building, but raised

objections that the remaining rules provided in the 2006 proposed regulations were overly complex and ambiguous. Many commentators recommended that the determination of a unit of property be based primarily on the functional interdependence test, similar to that used for depreciation and section 263A purposes, with no further factors, while other commentators recommended that the determination be based on the factors used in *FedEx Corp.* v. *United States*, 291 F. Supp. 2d 699 (W.D. Tenn. 2003), aff'd, 412 F.3d 617 (6th Cir. 2005).

The IRS and Treasury Department think that most of the factors listed in the 2006 proposed regulations were the same as the factors used in *FedEx*. However, commentators generally criticized the manner in which the 2006 proposed regulations applied these factors. Nonetheless, the IRS and Treasury Department agree that some factors, such as the rotable spare parts factor, may be overly burdensome, particularly for taxpayers that use small components in their businesses. Additionally, although some taxpayers in regulated industries favored the ability to conform to regulatory reporting, many that are not subject to regulatory accounting for all assets objected to the conformity rule as inappropriate and a potential source for uncertainty and controversy. Therefore, these new proposed regulations substantially modify the unit of property definition contained in the 2006 proposed regulations.

These new proposed regulations provide unit of property rules that generally are based on the functional interdependence standard, and include special rules for buildings, plant property, and network assets. Additional rules are provided that may require a smaller unit of property characterization in certain circumstances. Generally, improvements to a unit of property are not considered separate units of property even though the improvements are treated as separate assets for depreciation purposes.

These new proposed regulations generally provide the same rule for buildings as the 2006 proposed regulations. A building and its structural components are treated as a single unit of property. However, a special rule for condominiums and cooperatives is provided. Additionally, a leasehold improvement that is section 1250 property and is made by a lessee is a separate unit of property.

For property other than a building, these new proposed regulations provide that, in general, a single unit of property includes all components that are functionally interdependent. However, a number of special rules are provided that may require a smaller unit of property to be considered. The IRS and Treasury Department do not think that applying solely a functional interdependence test results in the appropriate unit for all types of property. For some types of property, such as machinery and equipment in a manufacturing plant, the functional interdependence test often results in a very expansive unit of property. The IRS and Treasury Department think it is inappropriate to use such a large unit of property for making a determination regarding improvements.

These new proposed regulations provide a special rule for plant property, which is defined as ''functionally interdependent machinery or equipment * * * used to perform an industrial process * * *.'' This definition is not intended to include all types of property used in a taxpayer's trade or business, but is intended only to capture the functionally interdependent machinery and equipment used in industrial processes like manufacturing, electric generation, distribution, warehousing, as well as equipment used in providing industrial services such as automated materials handling equipment. This special rule requires that the functionally interdependent machinery and equipment be separated into a component or a group of components that performs a discrete and major function or operation. These new proposed regulations provide various examples to illustrate activities that will constitute a discrete and major function.

These new proposed regulations provide the same definition of network assets as the 2006 proposed regulations and continue to reserve on providing a special rule for network assets. The IRS and Treasury Department think that in many situations, the unit of property for network assets should be smaller than the unit of property determined under the functional interdependence test. The IRS and Treasury Department generally think that the unit of property rules for network assets should be addressed on an industry by industry basis in Internal Revenue Bulletin guidance. Industries are invited to submit requests for guidance under the Industry Issue Resolution (IIR) program after these regulations are finalized.

These new proposed regulations also provide two additional rules that may require a smaller unit of property determination than that provided under the general rule. The first rule is triggered if the taxpayer has assigned different economic useful lives for financial statement or regulatory purposes to components of a single unit of property at the time the unit of property is placed in service by the taxpayer. Simply accounting for components separately (for example, recording the property separately in depreciation or other asset-tracking books and records) does not trigger this rule. However, assigning a different economic useful life to components will require that the unit of property determination be limited to those components that have been assigned the same useful life for financial statement purposes. The second rule applies when components of a single unit of property are depreciated by the taxpayer under different MACRS classes (including a different MACRS class that results from a change in method of accounting). This second rule also applies if components of a single unit of property are depreciated by the taxpayer using different recovery methods (for example, double-declining balance versus unit-of-production). Again, simply recording various components separately in the taxpayer's depreciation books and records will not trigger the rule.

These rules are intended to prevent overly broad unit of property determinations that are inconsistent with the taxpayer's characterization of the unit of property for depreciation purposes. In general, the IRS and Treasury Department anticipate that these limiting rules will apply only in unique circumstances. The IRS and Treasury Department encourage taxpayers to provide comments on the application of these limiting rules and to identify situations (if any) in which the limiting rules may not operate as intended.

B. Routine Maintenance Safe Harbor

The 2006 proposed regulations did not contain a routine maintenance safe harbor. Various commentators requested that the regulations provide guidance to clarify when the cost of a routine maintenance activity will be considered a deductible expense. In addition, commentators expressed concern that under the rules provided in the 2006 proposed regulations, routine maintenance activities are required to be capitalized if performed near the end of the economic useful life of the property, regardless that identical activities were considered deductible if performed earlier in the useful life.

To address this concern, these new proposed regulations provide a routine maintenance safe harbor under which qualifying activities will be deemed to not improve the unit of property. Under

this safe harbor, routine maintenance activities include recurring activities that a taxpayer expects to perform more than once over the class life of the unit of property as a result of the taxpayer's use of the unit of property to keep the unit of property in its ordinarily efficient operating condition. Amounts paid for betterments do not keep the unit of property in an ordinarily efficient operating condition; however, the replacement of minor parts with improved but comparable parts generally does not result in a betterment. Thus, for example, the safe harbor includes amounts paid for replacement parts that the taxpayer expects to replace more than once during the class life of the unit of property, even if the replacement part is an improved but comparable part. As part of the safe harbor provisions, these new proposed regulations provide a list of relevant considerations to be taken into account in determining whether an amount is paid for routine maintenance. These considerations include the recurring nature of the activity, industry practice, manufacturer recommendations, taxpayer experience and the treatment of the activity on the taxpayer's AFS. The safe harbor maintenance rule specifically applies to maintenance activities performed on rotable or temporary spare parts, but reminds taxpayers that under the rules proposed in § 1.162–3(b) of these new proposed regulations, the capitalized costs associated with rotable and temporary spare parts (that is, acquisition costs) may be deducted only in the taxable year in which the rotable or temporary spare part is discarded.

One concern with establishing a maintenance safe harbor that includes the costs of replacement parts is creating an incentive for taxpayers to componentize assets in an effort to recover basis upon the removal of a component while deducting the replacement cost as a repair or maintenance expense. Therefore, the safe harbor does not apply to the cost of replacement components in situations in which the taxpayer has taken into account the basis of the component being replaced in determining gain or loss resulting from a sale or exchange of the replacement component, has taken a loss related to the retirement of the component, or has taken a basis adjustment related to a casualty event under section 165.

The safe harbor is intended to operate only as a safe harbor in which qualifying costs will be deemed not to constitute an improvement. The IRS and Treasury Department recognize that many activities that do not qualify for the safe harbor nonetheless may be activities that do not give rise to capitalization of costs under section 263(a). Additionally, costs deductible under the maintenance safe harbor may be required to be capitalized under section 263A to other property produced or acquired for resale.

C. Betterments

1. Overview

The 2006 proposed regulations used the term ''material increase in value'' to generally describe the concept of a betterment. In general, commentators agreed with the standards outlined in the 2006 proposed regulations to determine whether an amount paid materially increases the value of property. However, commentators differed on whether taxpayers should be allowed to override the material increase in value test by proving that the activity did not actually increase fair market value. Consistent with the preamble to the 2006 proposed regulations, the IRS and Treasury Department continue to think that whether an amount paid should be capitalized as a betterment to a unit of property depends upon the purpose, the physical nature, and the effect of the work for which the amounts were paid, and not upon an analysis of the fair market value of the property before and after the work. Therefore, to clarify this distinction, these new proposed regulations change the name of the material increase in value test to the betterment test. The general rule focuses on betterments to the condition of the property, the costs of which should be capitalized as an improvement if the betterment is material, regardless of whether the betterment increases the fair market value.

Commentators noted that the general concept of a betterment is difficult to apply and suggested that the language in the regulations better define what types of events would give rise to a betterment. Additionally, commentators pointed out that some of the betterment tests were redundant. The IRS and Treasury Department agree that the general concept of a betterment or improvement can be difficult to apply. In developing these new proposed regulations, consideration was given to retaining the rules provided in the current regulations without providing clarification of material increase in value, prolong useful life, and new or different use. The principal concern in providing detailed rules on the concept of an improvement is the potential to create controversy in areas where none currently exists, which would undermine one of the primary purposes of the project.

Nonetheless, because commentators generally did not oppose the tests provided for material increase in value under the 2006 proposed regulations, these new proposed regulations continue to provide an exclusive list of tests that determine whether an amount paid results in a betterment in an attempt to further solicit comments in this area. The IRS and Treasury Department specifically request comments as to whether the exclusive list of tests with respect to improvements provides additional certainty in this area and if not, why. Given the continuing evaluation of this area, taxpayers should be particularly aware that no reliance should be placed on the rules provided in these new proposed regulations until such rules are finalized.

The tests included in the original proposed regulations have been reorganized in these new proposed regulations in an attempt to provide additional clarification. Under these new proposed regulations, an amount paid results in a betterment if it:

(i) Ameliorates a material condition or material defect that existed prior to the acquisition or arose during the production of the property,

(ii) Results in a material addition to the unit of property (including a physical enlargement, expansion, or extension), or

(iii) Results in a material increase in the capacity, productivity, efficiency, strength, or quality of the unit of property or its output.

2. Ameliorates a Material Condition or Defect

This rule generally follows the rule contained in the 2006 proposed regulations but clarifies, in response to comments received, that capitalization is only required to the extent the condition or defect is considered material. Commentators noted that a taxpayer may not know of a condition or defect that exists at the time property is acquired and that requiring capitalization of costs in this situation would create a hardship for those taxpayers. Although taxpayers may not be aware of defects that exist at the time of acquisition, the remedial activity being performed necessarily results in a betterment, regardless of whether the activity actually increases the fair market value of the property. The rule provided in these proposed regulations is consistent with established case law. See *United Dairy Farmers, Inc.* v. *United States*, 267 F.3d 510 (6th Cir. 2001);

Dominion Resources, Inc. v. *United States*, 219 F.3d 359 (4th Cir. 2000).

Moreover, adopting a rule based on a taxpayer's knowledge at the time of acquisition or production would be difficult to administer. The IRS and Treasury Department recognize that application of this rule to used property acquired by a taxpayer will result in some costs that would otherwise be deductible as repair costs being capitalized the first time the repairs are performed (if the condition or defect is material) if the nature of the activities is to correct the effects of wear and tear that was not caused by the taxpayer's use of the property. This result is consistent with the routine maintenance safe harbor, which requires the activities under that safe harbor to be performed as a result of the taxpayer's own use of the property.

The IRS and Treasury Department understand that certain cases exist in which a taxpayer contaminates property during its operations, the taxpayer disposes of the property, and the taxpayer reacquires the property to clean up the contamination. Under the proposed rule, a taxpayer would be required to capitalize the costs incurred to clean up the property even though it was the taxpayer's own activities that contaminated the property. The IRS and Treasury Department request comments regarding the appropriate treatment of environmental remediation costs in these circumstances, considering that the remediation is performed as a result of the taxpayer's own use of the property. The IRS and Treasury Department also request comments regarding how to determine whether the contamination was due solely to the taxpayer's prior operations or, if an interim owner may have added to the contamination, how to determine the appropriate treatment of remediation costs in that circumstance.

3. Results in a Material Increase in the Capacity, etc.

This rule applies both to material increases in the capacity, efficiency, strength, or quality of the unit of property itself as well as to material increases in the capacity, efficiency, strength, or quality of the output of the unit of property.

4. Application of Betterments Rule

Commentators requested that, to the extent possible, additional guidance be provided with respect to how the betterments rules, including materiality, should be applied. The IRS and Treasury Department considered various possible bright-line rules with respect to materiality, but determined that each rule was inappropriate under certain circumstances. For example, the IRS and Treasury Department considered a rule that presumed materiality if the amounts paid are capitalized in the taxpayer's financial statements as a permanent improvement, that is, the betterment is capitalized in the taxpayer's financial statements over the remaining economic useful life of the unit of property or longer. The IRS and Treasury Department think that financial statement treatment is an important factor in determining materiality, because if the activity is material enough to treat as an improvement for financial statements, then generally it should be a material improvement for tax purposes. However, this bright-line rule was not adopted because the IRS and Treasury Department recognize that the standards used for financial statement purposes for capitalization of improvements do not coincide with the rules for capitalization of improvements in these proposed regulations. For example, some taxpayers may defer major maintenance expenses and amortize the expenses over the period until the next maintenance cycle rather than immediately expensing the costs for financial statement purposes. The taxpayer's reason for not immediately expensing the cost for financial statement purposes (that is, treating the cost as a deferred expense or as a material capital expenditure) may not be readily apparent to the IRS, creating administrative burden and a potential source of controversy. Therefore, under these new proposed regulations, materiality will be based upon the facts and circumstances in each case. Examples are provided to illustrate to the application of materiality.

5. Appropriate Comparison for Betterments

The 2006 proposed regulations specifically provided that the appropriate comparison for determining whether an amount paid results in a betterment is made by comparing the condition of the unit of property immediately after the expenditure with the condition of the property prior to the circumstances necessitating the expenditure. These new proposed regulations retain the same comparison test.

D. Restorations

1. Overview

The 2006 proposed regulations provided that, consistent with section 263(a)(2), a taxpayer must capitalize amounts paid that restore a unit of property. The 2006 proposed regulations provided that amounts paid restore a unit of property only if they substantially prolong the economic useful life of the unit of property, and provided four rules for making that determination. The restoration of property rules contained in the 2006 proposed regulations were criticized by commentators as being overbroad and difficult to apply. In particular, the AFS definition of economic useful life and the bright-line one-year rule were denounced as providing inappropriate results. In response, these new proposed regulations make numerous modifications to the 2006 proposed regulations.

These new proposed regulations continue to require a taxpayer to capitalize amounts paid to restore a unit of property. However, the one-year rule and the AFS conformity requirement for economic useful life have been removed. These new proposed regulations provide a series of bright-line rules to determine when an amount paid is deemed to restore property. Although some commentators criticized rules that deem the cost of certain activities to be capitalized as restorations, the IRS and Treasury Department think that bright lines under this test will reduce controversy and help ease administration. These rules also expand on the rules provided in the 2006 proposed regulations with regard to the restoration of property after a casualty loss.

Section 263(a)(2) states that no deduction is allowed for any amount paid in restoring property or in making good the exhaustion thereof for which an allowance is or has been made. The IRS and Treasury Department think that this language requires capitalization of a replacement component if the taxpayer removes the basis of the replaced component from its books and records and takes the basis of the replaced component into account in its tax return. If a taxpayer takes into account the basis of a replaced component in its tax return, then the replacement of that component ''makes good the exhaustion thereof for which an allowance has been made.'' Therefore, these new proposed regulations provide that if the taxpayer has properly taken a portion of the existing adjusted basis of the restored asset into account in the computation of gain or loss on a sale or exchange, or as a retirement loss or other loss under the Code, the replacement of that component will be deemed to restore the unit of property.

2. Restoration of Property Destroyed In a Casualty

The 2006 proposed regulations required a taxpayer to capitalize amounts paid to repair property if the taxpayer properly deducted a casualty loss under section 165 with respect to a unit of property and the amounts paid restore the unit of property to a condition that is the same or better than before the casualty. The casualty loss rule provided in the 2006 proposed regulations was criticized. In general, commentators thought there should be no link between the recognition of a casualty loss under section 165 and the determination of whether the cost to replace the property destroyed (in part or in whole) after a casualty event constitutes a capital expenditure. However, significant authority implies that a casualty-type event generally may only be characterized either as an extraordinary event (thus giving rise to a ''loss'' under section 165), or as an ordinary and necessary event in the operation of a trade or business (thus giving rise to an ordinary and necessary deduction under section 162). See, e.g., *R. R. Hensler, Inc.* v. *Commissioner,* 73 T.C. 168, 179 (1979), acq., (1980–2 CB 1); *Hubinger* v. *Commissioner*, 36 F.2d 724, 726 (2d Cir. 1929), cert. denied, 281 U.S. 741 (1930). Thus, a casualty is not an ordinary event, and the cost to repair property damaged by a casualty is not an ordinary expense. Stated differently, a loss under section 165 represents a destruction of property necessitating a replacement, which is capital, while an ordinary event generally represents damage to property necessitating a repair, which may or may not be capital. Because the restoration cost resulting from a loss is not ordinary, it is not allowed as an ordinary and necessary expense under section 162, but is treated as a capital expenditure under section 263(a). Although it is clear that a casualty event generally results in two economic costs to the taxpayer (the destruction of the previously invested capital and the costs to replace the destruction), the event giving rise to both of these costs is the same.

These new proposed regulations generally require consistent characterization of all costs arising from a single event. Therefore, under the rules provided in these new proposed regulations, a taxpayer that experiences an extraordinary loss event sufficiently destructive to invoke the provisions of section 165 will be required to treat the resulting restoration costs as a capitalized replacement of the destroyed property. This rule is required to ensure consistency in tax treatment among similarly situated taxpayers. For example, a taxpayer whose property is completely destroyed by a casualty event is required to capitalize the restoration of the loss because the restoration results in the replacement of the destroyed property with an entirely new unit of property. However, without a consistency rule, a taxpayer who experiences the same casualty event but only has part of a unit of property destroyed might argue that the cost to replace the destroyed portion of the unit of property is deductible because it simply returns the unit of property as a whole to its pre-casualty state. Allowing this type of disparity in tax treatment would provide an incentive to characterize destructions of property as partial destructions in order to leave open the position that a deduction may be taken for both the destruction of property resulting from the casualty event, as well as the ordinary and necessary expense of replacing the destroyed property. This rule also eliminates the dual characterization of minor costs incurred for items such as broken windows or blown-off shingles as both a casualty loss under section 165 and an ordinary and necessary expense under section 162.

Commentators noted that a rule requiring the capitalization of restoration costs following the recognition of a casualty loss would unfairly burden taxpayers that routinely experience extraordinary loss events in their trade or business. However, it should be noted that under these new proposed regulations, capitalization is required only if a loss or basis adjustment to the property is recognized by the taxpayer with respect to the event.

Various judicial authorities have held that events that generally are viewed as extraordinary loss events may nonetheless be considered ordinary occurrences in a particular industry. See *Atlantic Greyhound Corp.* v. *United States,* 111 F. Supp. 953 (Ct. Cl. 1953). In this situation, the costs to replace property destroyed in what would normally be characterized as a casualty event may result in an ordinary and necessary expenditure under section 162 rather than a loss under section 165. In this regard, the IRS and Treasury Department will consider providing guidance on what types of events may be considered ordinary in a particular industry. Taxpayers are encouraged to provide comments on this issue.

Commentators also noted that the rule provided in the 2006 proposed regulations created a disparity between taxpayers that recognized a loss under section 165 and taxpayers that received untaxed insurance proceeds as a result of a casualty event and adjusted the basis of the damaged asset accordingly. These new proposed regulations eliminate this disparity.

3. Other Restorations

Similar to the 2006 proposed regulations, these new proposed regulations provide additional circumstances in which a restoration is deemed to occur. Capitalization is required for amounts paid to return a unit of property to its ordinarily efficient operating condition if the property has deteriorated to a state of disrepair and can no longer function for its intended purpose. The IRS and Treasury Department anticipate that these types of restorations will occur either as a result of lack of maintenance by the taxpayer or after the end of the property's useful life. A unit of property that is damaged by a casualty is not considered to be deteriorated to a state of disrepair.

These new proposed regulations also require capitalization of amounts paid to rebuild a unit of property to a like-new condition after the end of its economic useful life. The IRS and Treasury Department anticipate that this standard will apply to the traditional rebuilding of a unit of property to return it to a like-new condition. In general, a restoration under this rule will not result from routine maintenance activities, even if performed near the end of the useful life of the property, but instead represents a fundamental renewal of the economic useful life of the asset.

Similar to the 2006 proposed regulations, the new proposed regulations require capitalization of amounts paid to replace a major component or substantial structural part of a unit of property. In response to comments regarding the uncertainty in applying this standard, these new proposed regulations define the term ''major component or substantial structural part.'' Specifically, these new proposed regulations provide that the replacement of a major component or substantial structural part will be deemed to occur only if (a) the replacement costs constitute 50 percent or more of the replacement cost of the unit of property or (b) the replacement part or parts constitute 50 percent or more of the physical structure of the unit of property. These 50 percent thresholds apply solely for purposes of the restoration rules and are not intended to be applied to the betterment or new or different use rules.

E. New or Different Use

In general, these new proposed regulations contain the rules set forth in the 2006 proposed regulations with respect to the capitalization of amounts paid to adapt property to a new or different use. However, these new proposed regulations remove the parenthetical contained in the 2006 proposed regulations relating to ''structural alterations to the unit of property.'' Commentators noted that, although permanent structural alterations may result in adapting property to a new or different use, those alterations also could result in betterments to the unit of property and, in certain circumstances, could constitute routine maintenance. Commentators also noted that adapting property to a new or different use does not necessarily make the property better or increase its value, but nevertheless is a capital expenditure. Therefore, the new or different use rules are provided separately from the betterment rules in these new proposed regulations.

These new proposed regulations also clarify that amounts paid will be deemed to adapt property to a new or different use only if the new use is not consistent with the taxpayer's intended use of the property at the time the property is placed in service by the taxpayer. Additional examples have been added to clarify the application of this rule.

F. Repair Allowance

The 2006 proposed regulations provided a repair allowance similar to the CLADR repair allowance, but did not specify different repair allowance percentages for different industries. Commentators generally favored the idea of a repair allowance; however, they widely criticized the lack of percentages tailored to specific industries. Some commentators in regulated industries requested that they be allowed to determine their deductible repair costs and their capital improvement costs for tax purposes based on conformity with regulatory accounting reporting.

These new proposed regulations adopt the request by certain regulated industries to conform the tax treatment of amounts paid to maintain, repair, or improve tangible property to their regulatory accounting treatment. An optional regulatory accounting method is proposed for amounts paid to maintain, repair, or improve tangible property subject to regulatory accounting. For purposes of this method, regulated accounting industries include industries regulated by the Federal Energy Regulatory Commission (FERC), the Federal Communications Commission (FCC), and the Surface Transportation Board (STB). The IRS and Treasury Department recognize that conformity with the regulatory accounting rules in these industries frequently may result in the overcapitalization of costs, and sometimes the undercapitalization of costs, as compared to the general rules for improvements under these new proposed regulations. The regulatory accounting method is not intended to be used as a definitive test of what should be capitalized for taxpayers that do not elect to use the method.

These new proposed regulations do not propose a detailed repair allowance like the one that was provided in the 2006 proposed regulations. Some commentators stated that very large taxpayers will want to have a repair allowance, because applying the general rules asset-by-asset is too burdensome because of their numerous assets. The commentators made clear, however, that taxpayers would not widely use a one-size-fits-all approach and that any repair allowance must be tailored to individual industries. Therefore, these new proposed regulations provide authority for issuing industry-specific repair allowance guidance in the future.

IX. Accounting Method Changes

These new proposed regulations do not provide any specific rules for changes in method of accounting. Because these proposed regulations are not effective until they are published as final regulations, taxpayers may not change their accounting method to conform to a method of accounting provided in these proposed regulations. Generally, a taxpayer's treatment of an amount paid to conform with these proposed regulations will be a change in method of accounting under section 446(e). For example, a change to the routine maintenance safe harbor in § 1.263(a)–3(e) of these proposed regulations or to the optional regulatory accounting method in § 1.263(a)–3(i) of these proposed regulations is a change in method of accounting. The IRS and Treasury Department request comments on whether a change to or from the use of the de minimis rule in § 1.263(a)–2(d)(4) of these proposed regulations is a change in method of accounting under section 446(e).

Proposed Effective Date

These regulations are proposed to apply to taxable years beginning on or after the date the final regulations are published in the **Federal Register**. The final regulations will provide rules applicable to taxpayers that seek to change a method of accounting to comply with the rules contained in the final regulations. Taxpayers may not change a method of accounting in reliance upon the rules contained in these new proposed regulations until the rules are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 24, 2008, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by June 9, 2008 and an outline of the topics to be discussed and

the time to be devoted to each topic (signed original and eight (8) copies) by June 3, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Merrill D. Feldstein, Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–168745–03) published in the **Federal Register** on August 21, 2006, (71 FR 161) is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.162–3 is revised to read as follows:

§ 1.162–3 Materials and supplies.

(a) *In general*—(1) *Non-incidental materials and supplies.* Amounts paid to acquire or produce materials and supplies are deductible in the taxable year in which the materials and supplies are used or consumed in the taxpayer's operations.

(2) *Incidental materials and supplies.* Amounts paid to acquire or produce incidental materials and supplies that are carried on hand and for which no record of consumption is kept or physical inventories at the beginning and end of the year are not taken, are deductible in the taxable year in which these amounts are paid, provided taxable income is clearly reflected.

(b) *Rotable and temporary spare parts.* For purposes of this section, rotable spare parts are parts that are removable from the unit of property, generally repaired or improved, and either reinstalled on other property, or stored for later installation. Temporary spare parts are parts that are used temporarily until a new or repaired part can be installed, and then removed and stored for later (emergency or temporary) installation. For purposes of paragraph (a)(1) of this section, rotable and temporary spare parts are used or consumed in the taxpayer's business in the taxable year in which the taxpayer disposes of the parts.

(c) *Coordination with other provisions of the Internal Revenue Code.* Nothing in this section changes the treatment of any amount that is specifically provided for under any provision of the Internal Revenue Code (Code) or regulations other than section 162(a) or section 212 and the regulations under those sections. For example, see section § 1.263(a)–3, which requires taxpayers to capitalize amounts paid to improve units of property and section 263A and the regulations under section 263A, which require taxpayers to capitalize the direct and allocable indirect costs, including the cost of materials and supplies, to property produced or to property acquired for resale.

(d) *Definitions*—(1) *Materials and supplies.* For purposes of this section, *materials and supplies* means tangible property that is used or consumed in the taxpayer's operations and that—

(i) Is not a unit of property (as determined under § 1.263(a)–3(d)(2)) and is not acquired as part of a single unit of property; or

(ii) Is a unit of property (as determined under § 1.263(a)–3(d)(2)) that has an economic useful life of 12 months or less, beginning when the property is used or consumed in the taxpayer's operations; or

(iii) Is a unit of property (as determined under § 1.263(a)–3(d)(2)) that has an acquisition cost or production cost (as determined under section 263A) of $100 or less; or

(iv) Is identified in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) as materials and supplies for which treatment is permitted under this section.

(2) *Economic useful life*—(i) *General rule.* The economic useful life of a unit of property is not necessarily the useful life inherent in the property but is the period over which the property may reasonably be expected to be useful to the taxpayer or, if the taxpayer is engaged in a trade or business or an activity for the production of income, the period over which the property may reasonably be expected to be useful to the taxpayer in its trade or business or for the production of income, as applicable. See § 1.167(a)–1(b) for the factors to be considered in determining this period.

(ii) *Taxpayers with an applicable financial statement.* For taxpayers with an applicable financial statement (as defined in paragraph (d)(2)(iii) of this section), the economic useful life of a unit of property, solely for the purposes of applying the provisions of paragraph (d)(1)(ii) of this section, is the useful life initially used by the taxpayer for purposes of determining depreciation in its applicable financial statement, regardless of any salvage value of the property. If a taxpayer does not have an applicable financial statement for the taxable year in which the property was originally acquired or produced, the economic useful life of the unit of property must be determined under paragraph (d)(2)(i) of this section. Further, if a taxpayer treats amounts paid for a unit of property as an expense in its applicable financial statement on a basis other than the useful life of the property or if a taxpayer does not depreciate the unit of property on its applicable financial statement, the economic useful life of the unit of property must be determined under paragraph (d)(2)(i) of this section. For example, if a taxpayer has a policy of treating as an expense on its applicable financial statement amounts paid for property costing less than a certain dollar amount, notwithstanding that the property has a useful life of more than one year, the economic useful life of the property must be determined under paragraph (d)(2)(i) of this section.

(iii) *Definition of applicable financial statement.* The taxpayer's applicable financial statement is the taxpayer's financial statement listed in paragraphs (d)(2)(iii)(A) through (C) of this section that has the highest priority (including within paragraph (d)(2)(iii)(B) of this section). The financial statements are, in descending priority—

(A) A financial statement required to be filed with the Securities and Exchange Commission (SEC) (the 10–K or the Annual Statement to Shareholders);

(B) A certified audited financial statement that is accompanied by the report of an independent CPA (or in the case of a foreign entity, by the report of a similarly qualified independent professional), that is used for—

(*1*) Credit purposes;

(*2*) Reporting to shareholders, partners, or similar persons; or

(*3*) Any other substantial non-tax purpose; or

(C) A financial statement (other than a tax return) required to be provided to

the Federal or a state government or any Federal or state agencies (other than the SEC or the Internal Revenue Service).

(3) *Amount paid.* For purposes of this section, in the case of a taxpayer using an accrual method of accounting, the terms *amount paid* and *payment* mean a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(4) *Produce.* For purposes of this section, *produce* means construct, build, install, manufacture, develop, create, raise or grow. See also § 1.263(a)–2(b)(4). This definition is intended to have the same meaning as the definition used for purposes of section 263A(g)(1) and § 1.263A–2(a)(1)(i), except that improvements are excluded from the definition in this paragraph (d)(4) and are separately defined and addressed in § 1.263(a)–3. Amounts paid to produce materials and supplies must be capitalized under section 263A.

(e) *Election to capitalize.* A taxpayer may elect to treat as a capital expenditure the cost of any material or supply as defined in paragraph (d)(1) of this section, unless the material or supply is a component of a unit of property as described in paragraph (d)(1)(i) of this section, and the unit of property is a material or supply under paragraph (d)(1)(ii)–(iv) of this section, rather than a capital expenditure. An election made under this paragraph (e) applies to amounts paid during the taxable year to acquire or produce any material or supply to which paragraph (a) of this section would apply (but for the election under this paragraph (e)). A taxpayer makes the election by capitalizing the amounts paid to acquire or produce a material or supply in the taxable year the amounts are paid and by recovering the costs when the material or supply is placed in service by the taxpayer for the purposes of determining depreciation under the applicable Code and regulation provisions. A taxpayer must make this election in its timely filed original Federal income tax return (including extensions) for the taxable year the material or supply is placed in service by the taxpayer for purposes of determining depreciation. See § 1.263(a)–2 for the treatment of amounts paid to acquire or produce real or personal tangible property. In the case of a pass-through entity, the election is made by the pass-through entity, and not by the shareholders, partners, etc. An election must be made for each material and/or supply. A taxpayer may revoke an election made under this paragraph (e) with respect to a material or supply only by filing a request for a private letter ruling and obtaining the Commissioner's consent to revoke the election. An election may not be made or revoked through the filing of an application for change in accounting method or by an amended Federal income tax return. A taxpayer that revokes an election may not re-elect to capitalize the material or supply for a period of at least 60 months, beginning with the taxable year of revocation.

(f) *Examples.* The rules of this section are illustrated by the following examples, in which it is assumed (unless otherwise stated) that the property is not an incidental material or supply, that the taxpayer is a calendar year, accrual method taxpayer, and that the taxpayer has not elected to capitalize under paragraph (e) of this section.

Example 1. Not a unit of property; component of personal property. X operates a fleet of aircraft. In 2008, X purchases a stock of spare parts, which it uses to maintain and repair its aircraft. The spare parts are not units of property as determined under § 1.263(a)–3(d)(2) and are not rotable or temporary spare parts. In 2009, X uses the spare parts in a repair and maintenance activity that does not improve the property under § 1.263(a)–3. Under paragraph (a)(1) of this section, the amounts paid for the spare parts are deductible as materials and supplies in 2009, the taxable year in which the spare parts are used to repair and maintain the aircraft.

Example 2. Not a unit of property; rotable spare parts. X operates a fleet of specialized vehicles that it uses in its service business. At the time that it acquires a new type of vehicle, X also acquires a substantial number of rotable spare parts that will be kept on hand to quickly replace similar parts in X's vehicles as those parts break down or wear out. These rotable replacement parts are not units of property as determined under § 1.263(a)–3(d)(2), are removable from the vehicles, and are repaired or reconditioned, so that they can be reinstalled on the same or similar vehicles. In 2008, X acquires several vehicles and associated rotable spare parts. In 2009, X makes repairs to several vehicles by using these rotable spare parts to replace worn or damaged parts. In 2010, X removes these rotable spare parts from its vehicles, repairs them and reinstalls them on other similar vehicles. In 2012, X can no longer use the rotable parts it acquired in 2008 and disposes of them as scrap. Under paragraph (d)(1) of this section, the rotable spare parts acquired in 2008 are materials and supplies. However, under paragraph (b) of this section, these parts are not used or consumed until the taxable year in which X disposes of the parts. Therefore, under paragraph (a)(1) of this section, X may deduct the amounts paid for the rotable spare parts in 2012, the taxable year in which X disposes of the parts.

Example 3. Not a unit of property; part of a single unit of real property. X owns an apartment building and discovers that a window in one of the apartments is broken. In 2008, X pays for the acquisition, delivery, and installation of a new window to replace the broken window. In the same year, the new window is installed. The window is not a unit of property as determined under § 1.263(a)–3(d)(2), and the replacement of the window does not improve the property under § 1.263(a)–3. Under paragraph (a)(1) of this section, the amounts paid for the acquisition, delivery, and installation of the window are deductible as materials and supplies in 2008, the taxable year in which the window is installed in the apartment building.

Example 4. Economic useful life of 12 months or less. X operates a fleet of aircraft that carries freight for its customers. X owns a storage tank on its premises, which can hold a one-month supply of jet fuel for its aircraft. On December 31, 2008, X purchases a one-month supply of jet fuel. In 2009, X uses the jet fuel purchased on December 31, 2008, to fuel the aircraft used in its business. Under paragraph (a)(1) of this section, the amounts paid for the jet fuel are deductible as materials and supplies in 2009, the taxable year in which the jet fuel is used or consumed in the operation of X's aircraft.

Example 5. Unit of property that costs $100 or less. X operates a rental business that rents out a variety of small individual items to customers (rental items). X maintains a supply of rental items on hand to replace worn or damaged items. In 2008, X purchases a large quantity of rental items to use in its rental business. Each of these rental items is a unit of property that costs $100 or less. In 2009, X begins using all of the rental items purchased in 2008 by providing them to customers of its rental business. X does not sell or exchange these items on established retail markets at any time after the items are used in the rental business. Under paragraph (a)(1) of this section, the amounts paid for the rental items are deductible as materials and supplies in 2009, the taxable year in which the rental items are used in X's business.

Example 6. Unit of property that costs $100 or less. X provides billing services to its customers. In 2008, X incurs costs to purchase 50 facsimile machines to be used by its employees. Each facsimile machine is a unit of property that costs less than $100. In 2008, X's employees begin using 35 of the facsimile machines, and X stores the remaining 15 machines for use in a later taxable year. Under paragraph (a)(1) of this section, the amounts paid for 35 of the facsimile machines are deductible as materials and supplies in 2008, the taxable year in which X uses those machines. The amounts paid for each of the remaining 15 machines are deductible in the taxable year in which each machine is used.

Example 7. Materials and supplies used in improvements; coordination with § 1.263(a)–3. X owns various machines that are used in its business. In 2008, X purchases a supply of spare parts for its machines. The spare parts are not units of property as determined under § 1.263(a)–3(d)(2) and are not rotable or temporary spare parts. The spare parts may be used by X in the repair or maintenance of a machine under § 1.162–4 or in the improvement of a machine under

§ 1.263(a)–3. In 2009, X uses all of these spare parts in an activity that improves the unit of property under § 1.263(a)–3. Under paragraph (d)(1)(i) of this section, the spare parts purchased by X in 2008 are materials and supplies. Under paragraph (a)(1) of this section, the amounts paid for the spare parts are otherwise deductible as materials and supplies in 2009, the taxable year in which X uses those parts. However, because these materials and supplies are used to improve X's property, X is required to capitalize the amounts paid for those spare parts under § 1.263(a)–3. See also section 263A requiring taxpayers to capitalize the direct and allocable indirect costs of property produced or acquired for resale.

Example 8. Cost of producing materials and supplies; coordination with section 263A. X is a manufacturer that produces liquid waste as part of its operations. X determines that its current liquid waste disposal process is inadequate. To remedy the problem, in 2008, X constructs a leaching pit to provide a draining area for the liquid waste. The leaching pit has an economic useful life of less than 12 months, starting on the date that X begins to use the leaching pit as a draining area. At the end of this period, X's factory will be connected to the local sewer system. In 2009, X starts using the leaching pit in its operations. The amounts paid to construct the leaching pit (including the direct and allocable indirect costs of property produced under section 263A) are amounts paid for a material or supply under paragraph (d)(1)(ii) of this section. Under paragraph (a)(1) of this section, the amounts paid for the leaching pit are otherwise deductible as materials and supplies in 2009, the taxable year in which X uses the leaching pit. However, because the amounts paid to construct the leaching pit are incurred by reason of X's manufacturing operations, X is required to capitalize the amounts paid to construct the leaching pit to X's property produced. See § 1.263A–1(e)(3)(ii)(E).

Example 9. Costs of acquiring materials and supplies for production of property; coordination with section 263A. In 2008, X purchases jigs, dies, molds, and patterns for use in the manufacture of X's products. The economic useful life of each jig, die, mold, and pattern is 12 months or less, beginning when each item is used in the manufacturing process. X begins using the purchased items in 2009 to manufacture its products. These items are materials and supplies under paragraph (d)(1)(ii) of this section. Under paragraph (a)(1) of this section, the amounts paid for the items are otherwise deductible as materials and supplies in 2009, the taxable year in which X uses those items. However, because the amounts paid for these materials and supplies directly benefit or are incurred by reason of the taxpayer's production activities, X is required to capitalize the amounts paid for these items to X's property produced. See § 1.263A–1(e)(3)(ii)(E).

Example 10. Election to capitalize. X operates a rental business that rents out a variety of items (rental items) to its customers, each of which is a separate unit of property as determined under § 1.263(a)–3(d)(2). X does not sell or exchange these items on established retail markets at any time after the items are used in the rental business. In 2008, X incurs costs to purchase various rental items, all of which cost less than $100 or have an economic useful life of less than 12 months, beginning when used or consumed. X begins using the rental items in its business in 2008. Under paragraph (a)(1) of this section, the amounts paid for each rental item purchased in 2008 are deductible as a material or supply in the taxable year in which the item is used. However, for administrative reasons, X would prefer to treat all of its rental items as capital expenditures subject to depreciation. Under paragraph (e) of this section, X may elect not to apply the rule contained in paragraph (a)(1) of this section to the rental items. X makes this election by capitalizing the amounts paid for each rental item in the taxable year the costs are incurred and by beginning to recover the costs of each item on its timely filed Federal income tax return for the taxable year that the item is placed in service by X for purposes of determining depreciation under the applicable Code and regulation provisions. See § 1.263(a)–2(e) for the treatment of capital expenditures.

Example 11. Election to capitalize. X is an electric utility. In 2008, X acquires certain temporary spare parts, which it keeps on hand to avoid operational time loss in the event it must make emergency repairs to a unit of property that is subject to depreciation. These parts are not units of property as determined under § 1.263(a)–3(d)(2) and are not used to improve property under § 1.263(a)–3(d)(1). These temporary spare parts are used until a new or repaired part can be installed, and then removed and stored for later emergency installation. Under paragraphs (a)(1) and (b) of this section, the amounts paid for the temporary spare parts are deductible as materials and supplies in the taxable year in which they are disposed of by the taxpayer. However, because it is unlikely that the temporary spare parts will be disposed of in the near future, X would prefer to treat the spare parts as capital expenditures subject to depreciation. Accordingly, X may elect under paragraph (e) of this section not to apply the rule contained in paragraph (a)(1) of this section to each of its temporary spare parts. X makes this election by capitalizing the amounts paid for each spare part in the taxable year the costs are incurred and by beginning to recover the costs of each part on its timely filed Federal income tax return for the taxable year that the part is placed in service by X for purposes of determining depreciation under the applicable Code and regulation provisions. See § 1.263(a)–2(e) for the treatment of capital expenditures and section 263A requiring taxpayers to capitalize the direct and allocable indirect costs of property produced or acquired for resale.

Par. 3. Section 1.162–4 is revised to read as follows:

§ 1.162–4 Repairs.

Amounts paid for repairs and maintenance to tangible property are deductible if the amounts paid are not required to be capitalized under § 1.263(a)–3.

§ 1.162–6 [Removed]

Par. 4. Section 1.162–6 is removed.

Par. 5. Section 1.263(a)–0 is amended by revising the entries for §§ 1.263(a)–1, 1.263(a)–2 and 1.263(a)–3 to read as follows:

§ 1.263(a)–0 Table of contents.

* * * * *

§ 1.263(a)–1 Capital expenditures; in general.

(a) General rule for capital expenditures.
(b) Coordination with section 263A.
(c) Examples of capital expenditures.
(d) Amounts paid to sell property.
(1) In general.
(2) Treatment of capitalized amount.
(3) Examples.
(e) Amount paid.
(f) [Reserved]
(g) Effective/applicability date.

§ 1.263(a)–2 Amounts paid to acquire or produce tangible property.

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Par. 6. Section 1.263(a)–1 is revised to read as follows:

§ 1.263(a)–1 Capital expenditures; in general.

(a) *General rule for capital expenditures.* Except as provided in chapter 1 of the Internal Revenue Code (Code), no deduction is allowed for—

(1) Any amount paid for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, or

(2) Any amount paid in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

(b) *Coordination with section 263A.* Section 263(a) generally requires taxpayers to capitalize an amount paid to acquire, produce, or improve real or personal tangible property. Section 263A generally prescribes the direct and indirect costs that must be capitalized to property produced or improved by the taxpayer and property acquired for resale.

(c) *Examples of capital expenditures.* The following amounts paid are examples of capital expenditures:

(1) An amount paid to acquire or produce real or personal tangible property. See § 1.263(a)–2.

(2) An amount paid to improve real or personal tangible property. See § 1.263(a)–3.

(3) An amount paid to acquire or create intangibles. See § 1.263(a)–4.

(4) An amount paid or incurred to facilitate an acquisition of a trade or business, a change in capital structure of a business entity, and certain other transactions. See § 1.263(a)–5.

(5) An amount paid to acquire or create interests in land, such as easements, life estates, mineral interests, timber rights, zoning variances, or other interests in land.

(6) An amount assessed and paid under an agreement between bondholders or shareholders of a corporation to be used in a reorganization of the corporation or voluntary contributions by shareholders to the capital of the corporation for any corporate purpose. See section 118 and § 1.118–1.

(7) An amount paid by a holding company to carry out a guaranty of dividends at a specified rate on the stock of a subsidiary corporation for the purpose of securing new capital for the subsidiary and increasing the value of its stockholdings in the subsidiary. This amount must be added to the cost of the stock in the subsidiary.

(d) *Amounts paid to sell property*—(1) *In general.* Except in the case of dealers in property, commissions and other transaction costs paid to facilitate the sale of property generally must be capitalized. However, in the case of dealers in property, amounts paid to facilitate the sale of property are treated as ordinary and necessary business expenses. See § 1.263(a)–5(g) for the treatment of amounts paid to facilitate the disposition of assets that constitute a trade or business.

(2) *Treatment of capitalized amount.* Amounts capitalized under paragraph (d)(1) of this section are treated as a reduction in the amount realized and generally are taken into account either in the taxable year in which the sale occurs or in the taxable year in which the sale is abandoned if a loss deduction is permissible. The capitalized amount is not added to the basis of the property and is not treated as an intangible under § 1.263(a)–4.

(3) *Examples.* The following examples, which assume the sale is not an installment sale under section 453, illustrate the rules of this paragraph (d):

Example 1. Sales costs of real property. X owns a parcel of real estate. X sells the real estate and pays legal fees, recording fees, and sales commissions to facilitate the sale. X must capitalize the fees and commissions and, in the taxable year of the sale, offset the fees and commissions against the amount realized from the sale of the real estate.

Example 2. Sales costs of dealers. Assume the same facts as in *Example 1*, except that X is a dealer in real estate. The commissions and fees paid to facilitate the sale of the real estate are treated as ordinary and necessary business expenses under section 162.

Example 3. Sales costs of personal property used in a trade or business. X owns a truck for use in X's trade or business. X decides to sell the truck and on November 15, 2008, X pays for an appraisal to determine a reasonable asking price. On February 15, 2009, X sells the truck to Y. X is required to capitalize in 2008 the amount paid to appraise the truck and, in 2009, is required to offset the amount paid against the amount realized from the sale of the truck.

Example 4. Costs of abandoned sale of personal property used in a trade or business. Assume the same facts as in *Example 3*, except that, instead of selling the truck on February 15, 2009, X decides on that date not to sell the truck and takes the truck off the market. X is required to capitalize in 2008 the amount paid to appraise the truck. However, X may treat the amount paid to appraise the truck as a loss under section 165 in 2009 when the sale is abandoned.

Example 5. Sales costs of personal property not used in a trade or business. Assume the same facts as in *Example 3*, except that X does not use the truck in X's trade or business, but instead uses it for personal purposes. X decides to sell the truck and on November 15, 2008, X pays for an appraisal to determine a reasonable asking price. On February 15, 2009, X sells the truck to Y. X is required to capitalize in 2008 the amount

paid to appraise the truck and, in 2009, is required to offset the amount paid against the amount realized from the sale of the truck.

Example 6. Costs of abandoned sale of personal property not used in a trade or business. Assume the same facts as in *Example 5*, except that, instead of selling the truck on February 15, 2009, X decides on that date not to sell the truck and takes the truck off the market. X is required to capitalize in 2008 the amount paid to appraise the truck. Although the sale is abandoned in 2009, X may not treat the amount paid to appraise the truck as a loss under section 165 because the truck was not used in X's trade or business or in a transaction entered into for profit.

(e) *Amount paid.* In the case of a taxpayer using an accrual method of accounting, the terms *amount paid* and *payment* mean a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(f) [Reserved]

(g) *Effective/applicability date.* The rules in this section apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 7. Section 1.263(a)–2 is revised to read as follows:

§ 1.263(a)–2 Amounts paid to acquire or produce tangible property.

(a) *Overview.* This section provides rules for applying section 263(a) to amounts paid to acquire or produce a unit of real or personal property. Paragraph (b) of this section contains definitions. Paragraph (c) of this section contains the rules for coordinating this section with other provisions of the Internal Revenue Code (Code). Paragraph (d) of this section provides the rules for determining the treatment of amounts paid to acquire or produce a unit of real or personal property, including amounts paid to defend or perfect title to real or personal property and amounts paid to facilitate the acquisition of property. Paragraph (d) also provides a de minimis rule.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Amount paid.* In the case of a taxpayer using an accrual method of accounting, the terms *amount paid* and *payment* mean a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(2) *Personal property* means tangible personal property as defined in § 1.48–1(c).

(3) *Real property* means land and improvements thereto, such as buildings or other inherently permanent structures (including items that are structural components of the buildings or structures) that are not personal property as defined in paragraph (b)(2) of this section. Any property that constitutes other tangible property under § 1.48–1(d) is treated as real property for purposes of this section. Local law is not controlling in determining whether property is real property for purposes of this section.

(4) *Produce* means construct, build, install, manufacture, develop, create, raise, or grow. This definition is intended to have the same meaning as the definition used for purposes of section 263A(g)(1) and § 1.263A–2(a)(1)(i), except that improvements are excluded from the definition in this paragraph (b)(4) and are separately defined and addressed in § 1.263(a)–3.

(c) *Coordination with other provisions of the Internal Revenue Code*—(1) *In general.* Nothing in this section changes the treatment of any amount that is specifically provided for under any provision of the Code or regulations other than section 162(a) or section 212 and the regulations under those sections. For example, see section 263A requiring taxpayers to capitalize the direct and certain indirect costs of producing property or acquiring property for resale.

(2) *Materials and supplies.* Nothing in this section changes the treatment of amounts paid to acquire or produce property that is properly treated as materials and supplies under § 1.162–3.

(d) *Acquired or produced tangible property*—(1) *In general*—(i) *Requirement of capitalization.* Except as provided in paragraph (d)(4) of this section (relating to the *de minimis* rule) and in § 1.162–3(d)(1)(ii), (iii), and (iv) (relating to certain materials and supplies), a taxpayer must capitalize amounts paid to acquire or produce a unit of real or personal property (as determined under § 1.263(a)–3(d)(2)), including leasehold improvement property, land and land improvements, buildings, machinery and equipment, and furniture and fixtures. Amounts paid to acquire or produce a unit of real or personal property include the invoice price, transaction costs as determined under paragraph (d)(3) of this section, and costs for work performed prior to the date that the unit of property is placed in service by the taxpayer (without regard to any applicable convention under section 168(d)). A taxpayer also must capitalize amounts paid to acquire real or personal property for resale and to produce real or personal property. See section 263A for the costs required to be capitalized to property produced by the taxpayer or to property acquired for resale.

(ii) *Examples.* The rules of this section are illustrated by the following examples, in which it is assumed that the taxpayer does not apply the *de minimis* rule under paragraph (d)(4) of this section:

Example 1. Acquisition of personal property. In 2008, X purchases new cash registers for use in its retail store located in leased space in a shopping mall. Assume each cash register is a unit of property as determined under § 1.263(a)–3(d)(2), and is not a material or supply under § 1.162–3. X must capitalize under this paragraph (d)(1) the amount paid to purchase each cash register.

Example 2. Relocation of personal property. Assume the same facts as in Example 1, except that X's lease expires in 2009 and X decides to relocate its retail store to a different building. In addition to various other costs, X pays $5,000 to move the cash registers. X is not required to capitalize under this paragraph (d)(1) the $5,000 amount paid for moving the cash registers.

Example 3. Acquisition of personal property that is not a unit of property; coordination with § 1.162–3. X operates a fleet of aircraft. In 2008, X purchases a stock of spare parts, which it uses to maintain and repair its aircraft. Assume that the spare parts are not units of property as determined under § 1.263(a)–3(d)(2). X does not make elections under § 1.162–3(e) to treat the materials and supplies as capital expenditures. In 2009, X uses the spare parts in a repair and maintenance activity that does not improve the property under § 1.263(a)–3. Because the parts are not units of property, X is not required to capitalize the amounts paid for the parts under this paragraph (d)(1). Rather, X must apply the rules in § 1.162–3, governing the treatment of materials and supplies, to determine the treatment of these amounts.

Example 4. Acquisition of unit of personal property; coordination with § 1.162–3. X operates a rental business that rents out a variety of small individual items to customers (rental items). X maintains a supply of rental items on hand to replace worn or damaged items. In 2008, X purchases a large quantity of rental items to be used in its business. Assume that each of these items is a unit of property under § 1.263(a)–3(d)(2) and that several of these rental items are materials and supplies under the definition provided in § 1.162–3(d). Therefore, X must apply the rules in § 1.162–3 to determine the treatment of the amounts paid to acquire rental items that are materials and supplies. Under this paragraph (d)(1), X must capitalize the amounts paid for the rental items that are units of property and do not otherwise qualify as materials and supplies under § 1.162–3(d).

Example 5. Acquisition or production cost. X purchases or produces jigs, dies, molds, and patterns for use in the manufacture of X's products. Assume that each of these items is a unit of property as determined under § 1.263(a)–3(d)(2), and is not a material and supply under § 1.162–3(d). X is required to

capitalize under this paragraph (d)(1) the amounts paid to produce or purchase the jigs, dies, molds, and patterns. See section 263A for the costs to be capitalized to property produced by X.

Example 6. Acquisition of land. X purchases a parcel of undeveloped real estate. X must capitalize under this paragraph (d)(1) the amount paid to acquire the real estate. See § 1.263(a)–2(d)(3) for the treatment of amounts paid to facilitate the acquisition of real property.

Example 7. Acquisition of building. X purchases a building. X must capitalize under this paragraph (d)(1) the amount paid to acquire the building. See § 1.263(a)–2(d)(3) for the treatment of amounts paid to facilitate the acquisition of real property.

Example 8. Acquisition of property for resale. X purchases goods for resale. X must capitalize under this paragraph (d)(1) the amounts paid to acquire the goods. See section 263A for the costs to be capitalized to property acquired for resale.

Example 9. Production of property for sale. X produces goods for sale. X must capitalize under this paragraph (d)(1) the amount paid to produce the goods. See section 263A for the costs to be capitalized to property produced by X.

Example 10. Production of building. X constructs a building. X must capitalize under this paragraph (d)(1) the amount paid to construct the building. See section 263A for the costs to be capitalized to real property produced by X.

Example 11. Acquisition of assets constituting a trade or business. Y owns tangible and intangible assets that constitute a trade or business. X purchases all the assets of Y in a taxable transaction. X must capitalize under this paragraph (d)(1) the amount paid for the tangible assets of Y. See § 1.263(a)–4 for the treatment of amounts paid to acquire intangibles and § 1.263(a)–5 for the treatment of amounts paid to facilitate the acquisition of assets that constitute a trade or business. See section 1060 for special allocation rules for certain asset acquisitions.

Example 12. Work performed prior to placing the property in service. In 2008, X purchases a building for use as a business office. The building is in a state of disrepair. Prior to placing the building in service, X incurs costs to repair cement steps, shore up parts of the first and second floors, replace electrical wiring, remove and replace old plumbing, and paint the outside and inside of the building. All the work was performed on the building or its structural components. In 2010, X places the building in service and begins using the building as its business office. Assume the building and its structural components is the unit of property. The amounts paid must be capitalized as costs of acquiring the building because they were for work performed prior to X's placing the building in service.

Example 13. Work performed prior to placing the property in service. In January 2008, X purchases a new machine for use in an existing production line of its manufacturing business. Assume that the machine is a unit of property under § 1.263(a)–3(d)(2). After the machine is installed, X performs critical testing on the machine to ensure that it is operational. On November 1, 2008, the critical testing is complete and X places the machine in service on the production line. X continues to perform testing for quality control. The amounts paid for the installation and critical testing must be capitalized as costs of acquiring the machine because they were for work performed prior to X's placing the machine in service. However, amounts paid for quality control testing after the machine is placed in service by X are not required to be capitalized as a cost of acquiring the machine.

(2) *Defense or perfection of title to property*—(i) *In general.* Amounts paid to defend or perfect title to real or personal property are amounts paid to acquire or produce property within the meaning of this section and must be capitalized. See section 263A for the costs required to be capitalized to property produced by the taxpayer or to property acquired for resale.

(ii) *Examples.* The following examples illustrate the rule of this paragraph (d)(2):

Example 1. Amounts paid to contest condemnation. X owns real property located in County. County files an eminent domain complaint condemning a portion of X's property to use as a roadway. X hires an attorney to contest the condemnation. Amounts paid by X to the attorney must be capitalized because they were to defend X's title to the property.

Example 2. Amounts paid to invalidate ordinance. X is in the business of quarrying and supplying for sale sand and stone in a certain municipality. Several years after X establishes its business, the municipality in which it is located passes an ordinance that prohibits the operation of X's business. X incurs attorney's fees in a successful prosecution of a suit to invalidate the municipal ordinance. X prosecutes the suit to preserve its business activities and not to defend X's title in the property. Therefore, attorney's fees paid by X are not required to be capitalized under this paragraph (d)(2). However, under section 263A, all indirect costs, including otherwise deductible costs, that directly benefit or are incurred by reason of the taxpayer's production activities must be capitalized to the property produced for sale. See § 1.263A–1(e)(3)(i). Therefore, because the amounts paid to invalidate the ordinance are incurred by reason of X's production activities, the amounts paid must be capitalized under section 263A to the property produced for sale by X.

Example 3. Amounts paid to challenge building line. The board of public works of a municipality establishes a building line across X's business property, adversely affecting the value of the property. X incurs legal fees in unsuccessfully litigating the establishment of the building line. Amounts paid by X to the attorney must be capitalized because they were to defend X's title to the property.

(3) *Transaction costs*—(i) *In general.* A taxpayer must capitalize amounts paid to facilitate the acquisition or production of real or personal property. See section 263A for the costs required to be capitalized to property produced by the taxpayer or to property acquired for resale. See § 1.263(a)–5 for the treatment of amounts paid to facilitate the acquisition of assets that constitute a trade or business.

(ii) *Scope of facilitate*—(A) *In general.* Except as otherwise provided in this section, an amount is paid to facilitate the acquisition of real or personal property if the amount is paid in the process of investigating or otherwise pursuing the acquisition. Whether an amount is paid in the process of investigating or otherwise pursuing the acquisition is determined based on all of the facts and circumstances. In determining whether an amount is paid to facilitate an acquisition, the fact that the amount would (or would not) have been paid but for the acquisition is relevant, but is not determinative. These amounts include, but are not limited to, inherently facilitative amounts specified in paragraph (d)(3)(ii)(B) of this section.

(B) *Inherently facilitative amounts.* An amount paid in the process of investigating or otherwise pursuing the acquisition of real or personal property facilitates the acquisition if the amount is inherently facilitative. An amount is inherently facilitative if the amount is paid for—

(*1*) Transporting the property (for example, shipping fees and moving costs);

(*2*) Securing an appraisal or determining the value or price of property;

(*3*) Negotiating the terms or structure of the acquisition and obtaining tax advice on the acquisition;

(*4*) Application fees, bidding costs, or similar expenses;

(*5*) Preparing and reviewing the documents that effectuate the acquisition of the property (for example, preparing the bid, offer, sales contract, or purchase agreement);

(*6*) Examining and evaluating the title of property;

(*7*) Obtaining regulatory approval of the acquisition or securing permits related to the acquisition, including application fees;

(*8*) Conveying property between the parties, including sales and transfer taxes, and title registration costs;

(*9*) Finders' fees or brokers' commissions, including amounts paid that are contingent on the successful closing of the acquisition;

(*10*) Architectural, geological, engineering, environmental or inspection services pertaining to particular properties; and

(*11*) Services provided by a qualified intermediary or other facilitator of an exchange under section 1031.

(C) *Special rule for acquisitions of real property.* Except as provided in paragraph (d)(3)(ii)(B) of this section (relating to inherently facilitative amounts), an amount paid by the taxpayer in the process of investigating or otherwise pursuing the acquisition of real property does not facilitate the acquisition if it relates to activities performed in the process of determining whether to acquire real property and which real property to acquire.

(D) *Employee compensation and overhead costs*—(*1*) *In general.* For purposes of this paragraph (d)(3), amounts paid for employee compensation (within the meaning of § 1.263(a)–4(e)(4)(ii)) and overhead are treated as amounts that do not facilitate the acquisition of real or personal property. See section 263A for the treatment of employee compensation and overhead costs required to be capitalized to property produced by the taxpayer or to property acquired for resale.

(*2*) *Election to capitalize.* A taxpayer may elect to treat amounts paid for employee compensation or overhead as amounts that facilitate the acquisition of property. The election is made separately for each acquisition and applies to employee compensation or overhead, or both. For example, a taxpayer may elect to treat overhead, but not employee compensation, as amounts that facilitate the acquisition of property. A taxpayer makes the election by treating the amounts to which the election applies as amounts that facilitate the acquisition in the taxpayer's timely filed original Federal income tax return (including extensions) for the taxable year during which the amounts are paid. In the case of an S corporation or partnership, the election is made by the S corporation or by the partnership, and not by the shareholders or partners. A taxpayer may revoke an election made under this paragraph (d)(3)(ii)(D)(*2*) with respect to each acquisition only by filing a request for a private letter ruling and obtaining the Commissioner's consent to revoke the election. An election may not be made or revoked through the filing of an application for change in accounting method or by an amended Federal income tax return.

(iii) *Treatment of transaction costs.* All amounts paid to facilitate the acquisition or production of real or personal property are capital expenditures. Inherently facilitative amounts allocable to real or personal property are capital expenditures related to such property even if the property is not eventually acquired or produced. Facilitative amounts allocable to real or personal property actually acquired or produced must be included in the basis of the property acquired or produced. See paragraph (f) of this section for the recovery of capitalized amounts.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (d)(3):

Example 1. Broker's fees to facilitate an acquisition. X decides to purchase a building in which to relocate its offices and hires a real estate broker to find a suitable building. X pays fees to the broker to find property for X to acquire. Under paragraph (d)(3)(i) of this section, X must capitalize the amounts paid to the broker because these costs are inherently facilitative of the acquisition of real property.

Example 2. Inspection and survey costs to facilitate an acquisition. X decides to purchase building A and pays amounts to third-party contractors for a termite inspection and an environmental survey of building A. Under paragraph (d)(3)(i) of this section, X must capitalize the amounts paid for the inspection and the survey of the building because these costs are inherently facilitative of the acquisition of real property.

Example 3. Moving costs to facilitate an acquisition. X purchases all the assets of Y and, in connection with the purchase, hires a transportation company to move storage tanks from Y's plant to X's plant. Under paragraph (d)(3)(i) of this section, X must capitalize the amount paid to move the storage tanks from Y's plant to X's plant because this cost is inherently facilitative to the acquisition of personal property.

Example 4. Scope of facilitate. X is in the business of providing legal services to clients. X is interested in acquiring a new conference table for its office. X hires and incurs fees for an interior designer to shop for, evaluate, and make recommendations to X regarding which new table to acquire. Under paragraph (d)(3)(i) of this section, X must capitalize the amounts paid to the interior designer to provide these services because they are paid in the process of investigating or otherwise pursuing the acquisition of personal property.

Example 5. Transaction costs allocable to other property. X, a retailer, wants to acquire land for the purpose of building a new distribution facility for its products. X considers various properties on highway A in state B. In evaluating the feasibility of several sites, X incurs fees for the services of an architect to advise and prepare preliminary plans for a facility that X is reasonably likely to construct at one of the sites. The architect's fees are not inherently facilitative to the acquisition of land, but are inherently facilitative to the acquisition of a building under paragraph (d)(3)(ii)(B)(*10*) of this section. In addition, these costs are allocable as construction costs of the building under section 263A. Therefore, X does not capitalize these fees as amounts to acquire the building under paragraph (d)(3)(ii)(B) of this section, but instead must capitalize these costs as indirect costs allocable to the production of property under section 263A.

Example 6. Special rule for acquisitions of real property. X owns several retail stores. X decides to examine the feasibility of opening a new store in City A. In October 2008, X hires and incurs costs for a development consulting firm to study City A and perform market surveys, evaluate zoning and environmental requirements, and make preliminary reports and recommendations as to areas that X should consider for purposes of locating a new store. In December 2008, X continues to consider whether to purchase real property in City A and which property to acquire. X hires, and incurs fees for, an appraiser to perform appraisals on two different sites to determine a fair offering price for each site. In March 2009, X decides to acquire one of these two sites for the location of its new store. At the same time, X determines not to acquire the other site. Under paragraph (d)(3)(ii)(C) of this section, X is not required to capitalize amounts paid to the development consultant in 2008 because the amounts relate to activities performed in the process of determining whether to acquire real property and which real property to acquire and the amounts are not inherently facilitative costs under paragraph (d)(3)(ii)(B) of this section. However, X must capitalize amounts paid to the appraiser in 2008 because the appraisal costs are inherently facilitative costs under paragraph (d)(3)(ii)(B)(*2*) of this section. In 2009, X must include the appraisal costs allocable to property acquired in the basis of the property acquired and may recover the appraisal costs allocable to the property not acquired in accordance with paragraph (f) of this section.

Example 7. Employee compensation and overhead. X, a freight carrier, maintains an acquisition department whose sole function is to arrange for the purchase of vehicles and aircraft from manufacturers or other parties to be used in its freight carrying business. As provided in paragraph (d)(3)(ii)(D)(*1*) of this section, X is not required to capitalize any portion of the compensation paid to employees in its acquisition department or any portion of its overhead allocable to its acquisition department. However, under paragraph (d)(3)(ii)(D)(*2*) of this section, X may elect to capitalize the compensation and overhead costs allocable to the acquisition of a vehicle or aircraft by treating these amounts as costs that facilitate the acquisition of that property in its timely filed original Federal income tax return for the year the amounts are paid.

(4) *De minimis rule*—(i) *In general.* Except as otherwise provided in this paragraph (d)(4), a taxpayer is not required to capitalize under paragraph (d) of this section amounts paid for the acquisition or production (including any amounts paid to facilitate the acquisition or production) of a unit of property (as determined under § 1.263(a)–3(d)(2)) if—

(A) The taxpayer has an applicable financial statement (as defined in § 1.263(a)–2(d)(4)(vi));

(B) The taxpayer has at the beginning of the taxable year, written accounting procedures treating as an expense for non-tax purposes the amounts paid for property costing less than a certain dollar amount;

(C) The taxpayer treats the amounts paid during the taxable year as an expense on its applicable financial statement in accordance with its written accounting procedures; and

(D) The total aggregate of amounts paid and not capitalized under paragraphs (d)(4)(i)(A), (B), and (C) of this section for the taxable year do not distort the taxpayer's income for the taxable year.

(ii) *Exceptions to de minimis* rule. The de minimis rule in paragraph (d)(4)(i) of this section does not apply to the following:

(A) Amounts paid to improve property under § 1.263(a)–3.

(B) Amounts paid for property that is or is intended to be included in property produced or acquired for resale.

(C) Amounts paid for land.

(iii) *Safe harbor.* The total aggregate amount that is not required to be capitalized under the de minimis rule of paragraphs (d)(4)(i)(A), (B) and (C) of this section for the taxable year is deemed to not distort the taxpayer's income under paragraph (d)(4)(i)(D) of this section if this amount, added to the amount the taxpayer deducts in the taxable year as materials and supplies under the definition provided under § 1.162–3(d)(1)(iii) (relating to certain property costing $100 or less), is less than or equal to the lesser of—

(A) 0.1 percent of the taxpayer's gross receipts for the taxable year; or

(B) 2 percent of the taxpayer's total depreciation and amortization expense for the taxable year as determined in its applicable financial statement.

(iv) *Additional rules.* Property to which a taxpayer applies the de minimis rule contained in paragraph (d)(4) of this section is not treated upon sale or disposition as a capital asset under section 1221 or as property used in the trade or business under section 1231. Property to which a taxpayer applies the de minimis rule contained in paragraph (d)(4) of this section is not a material or supply under § 1.162–3. The cost of property to which a taxpayer properly applies the de minimis rule contained in paragraph (d)(4) of this section is not required to be capitalized under section 263A to a separate unit of property, but may be required to be capitalized as a cost of other property if incurred by reason of the production of the other property. See, for example, § 1.263A–1(e)(3)(ii)(O) requiring taxpayers to capitalize repair and maintenance costs allocable to property produced or acquired for resale.

(v) *Election to capitalize.* A taxpayer may elect not to apply the de minimis rule contained in paragraph (d)(4)(i) of this section. An election made under this paragraph (d)(4)(v) applies to any unit of property during the taxable year to which paragraphs (d)(4)(i)(A), (B), and (C) of this section would apply (but for the election under this paragraph (d)(4)(v)). A taxpayer makes the election by treating the amount paid as a capital expenditure in its timely filed original Federal income tax return (including extensions) for the taxable year in which the amount is paid. In the case of an S corporation or partnership, the election is made by the S corporation or by the partnership, and not by the shareholders or partners. A taxpayer may revoke an election made under this paragraph (d)(4)(v) with respect to a unit of property only by filing a request for a private letter ruling and obtaining the Commissioner's consent to revoke the election. An election may not be made or revoked through the filing of an application for change in accounting method or by an amended Federal income tax return.

(vi) *Definition of applicable financial statement.* For purposes of this paragraph (d)(4), the taxpayer's applicable financial statement is the taxpayer's financial statement listed in paragraphs (d)(4)(vi)(A) through (C) of this section that has the highest priority (including within paragraph (d)(4)(iv)(B) of this section). The financial statements are, in descending priority—

(A) A financial statement required to be filed with the Securities and Exchange Commission (SEC) (the 10–K or the Annual Statement to Shareholders);

(B) A certified audited financial statement that is accompanied by the report of an independent CPA (or in the case of a foreign entity, by the report of a similarly qualified independent professional), that is used for—

(*1*) Credit purposes;

(*2*) Reporting to shareholders, partners, or similar persons; or

(*3*) Any other substantial non-tax purpose; or

(C) A financial statement (other than a tax return) required to be provided to the Federal or a state government or any Federal or state agencies (other than the SEC or the Internal Revenue Service).

(vii) *Examples.* The following examples illustrate the rule of this paragraph (d)(4):

Example 1. De minimis rule. X purchases 10 printers at $200 each for a total cost of $2000. Assume that each printer is a unit of property under § 1.263(a)–3(d)(2). X has an applicable financial statement. X has a written policy at the beginning of the taxable year to expense amounts paid for property costing less than $500. X treats the amounts paid for the printers as an expense on its applicable financial statement. Assuming the total aggregate amounts not capitalized under the de minimis rule for the taxable year do not distort the taxpayer's income, X is not required to capitalize the amounts paid for the printers.

Example 2. De minimis rule safe harbor not met. X is a member of an affiliated group that files a consolidated return. In 2008, X purchases 300 computers at $400 each for a total cost of $120,000. Assume that each computer is a unit of property under § 1.263(a)–3(d)(2). X has a written policy at the beginning of the taxable year to expense amounts paid for property costing less than $500. X treats the amounts paid for the computers as an expense on its applicable financial statement. In addition, in 2008 X purchases 300 desk chairs for $50 each for a total cost of $15,000. X intends to deduct the amounts paid for the desk chairs when used or consumed as non-incidental materials and supplies under § 1.162–3(a)(1) and § 1.162–3(d)(1)(iii) because they are units of property costing less than $100. For its 2008 taxable year, X has gross receipts of $125,000,000 and reports $7,000,000 of depreciation and amortization on its applicable financial statement. Thus, in order to meet the de minimis rule safe harbor for 2008, the sum of the amounts not required to be capitalized under the de minimis rule for 2008 ($120,000) plus the amounts X intends to deduct as materials and supplies under § 1.162–3(a)(1) and § 1.162–3(d)(1)(iii) for 2008 ($15,000), must be less than or equal to $125,000 (0.1% of X's total gross receipts of $125,000,000), which is less than $140,000 (2% of X's total depreciation and amortization of $7,000,000). Because $135,000 ($120,000 + $15,000) exceeds $125,000, X will not meet the de minimis rule safe harbor for its 2008 taxable year. As a result, to apply the de minimis rule to the $120,000 paid to acquire the computers, X will have to otherwise establish that this amount does not distort the taxpayer's income in 2008.

Example 3. De minimis rule safe harbor met. Assume the same facts as in *Example 2*, except X makes an election under paragraph (d)(4)(v) of this section to capitalize the $10,000 paid to acquire 25 of the 300 computers at $400 each. In this case, X is not required to capitalize the $110,000 paid to acquire the remaining 275 computers under paragraph (d)(4)(i) because this amount, when added to the $15,000 that X intends to deduct in 2008 as materials and supplies under § 1.162–3(a)(1) and § 1.163–3(d)(1)(iii), does not exceed the de minimis rule safe harbor of $125,000 for 2008.

Example 4. De minimis rule safe harbor; election to capitalize. Assume the same facts as in *Example 2*, except X does not otherwise establish that the deduction of amounts in excess of the $125,000 safe harbor do not distort X's income in 2008. Rather, X makes an election under § 1.162–3(d) to capitalize

$10,000 paid to acquire 200 of the 300 desk chairs at $50 each. In this case, X is not required to capitalize the $120,000 paid to acquire the 300 computers under paragraph (d)(4)(i) of this section because this amount, when added to the $5000 (the remaining 100 desk chairs at $50 each) that X intends to deduct in 2008 as materials and supplies under § 1.162–3(a)(1) and § 1.162–3(d)(1)(iii), does not exceed the de minimis rule safe harbor of $125,000 for 2008.

(e) *Treatment of capital expenditures.* Amounts required to be capitalized under this section are capital expenditures and must be taken into account through a charge to capital account or basis, or in the case of property that is inventory in the hands of a taxpayer, through inclusion in inventory costs. See section 263A for the treatment of amounts referred to in this section as well as other amounts paid in connection with the production of real property and personal property, including films, sound recordings, video tapes, books, or similar properties.

(f) *Recovery of capitalized amounts*—(1) *In general.* Amounts that are capitalized under this section are recovered through depreciation, cost of goods sold, or by an adjustment to basis at the time the property is placed in service, sold, used, or otherwise disposed of by the taxpayer. Cost recovery is determined by the applicable Code and regulation provisions relating to the use, sale, or disposition of property.

(2) *Examples.* The following examples illustrate the rule of this paragraph (f)(1). Assume that X does not apply the de minimis rule under paragraph (d)(4) of this section.

Example 1. Recovery when property placed in service. X owns a 10-unit apartment building. The refrigerator in one of the apartments stops functioning and X purchases a new refrigerator to replace the old one. X pays for the acquisition, delivery, and installation of the new refrigerator to replace the old refrigerator. Assume that the refrigerator is the unit of property, as determined under § 1.263(a)–3(d)(2), and is not a material or supply under § 1.162–3. Under paragraph (d) of this section, X is required to capitalize the amounts paid for the acquisition, delivery, and installation of the refrigerator. Under this paragraph (f), the capitalized amounts are recovered through depreciation when the refrigerator is placed in service by X.

Example 2. Recovery when property used in the production of property. X operates a plant where it manufactures widgets. X purchases a tractor/loader to move raw materials into and around the plant for use in the manufacturing process. Assume that the tractor/loader is a unit of property, as determined under § 1.263(a)–3(d)(2), and is not a material or supply under § 1.162–3. Under paragraph (d) of this section, X is required to capitalize the amounts paid to acquire the tractor/loader. Under this paragraph (f), the capitalized amounts are recovered through depreciation when the tractor/loader is placed in service by X. However, because the tractor/loader is used in the production of property, under section 263A the cost recovery (that is, the depreciation) on the capitalized amounts must be capitalized to X's property produced, and consequently, recovered through cost of goods sold. See § 1.263A–1(e)(3)(ii)(I).

(g) [Reserved]

(h) *Effective/applicability date.* The rules in this section apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 8. Section 1.263(a)–3 is revised to read as follows:

§ 1.263(a)–3 Amounts paid to improve tangible property.

(a) *Overview.* This section provides rules for applying section 263(a) to amounts paid to improve tangible property. Paragraph (b) of this section provides definitions. Paragraph (c) of this section provides rules for coordinating this section with other provisions of the Internal Revenue Code (Code). Paragraph (d) of this section provides rules for determining the treatment of amounts paid to improve tangible property, including rules for determining the appropriate unit of property. Paragraph (e) of this section provides a safe harbor for routine maintenance costs. Paragraph (f) of this section provides rules for determining whether amounts paid result in betterments to the unit of property. Paragraph (g) of this section provides rules for determining whether amounts paid restore the unit of property. Paragraph (h) of this section provides rules for amounts paid to adapt the unit of property to a new or different use. Paragraph (i) of this section provides an optional regulatory accounting method safe harbor. Paragraph (j) of this section provides an optional repair allowance. Paragraphs (k) through (m) of this section provide additional rules related to these provisions. Paragraph (n) of this section provides the applicability date of the rules in this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Amount paid.* In the case of a taxpayer using an accrual method of accounting, the terms *amounts paid* and *payment* mean a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(2) *Personal property* means tangible personal property as defined in § 1.48–1(c).

(3) *Real property* means land and improvements thereto, such as buildings or other inherently permanent structures (including items that are structural components of the buildings or structures) that are not personal property as defined in paragraph (b)(2) of this section. Any property that constitutes other tangible property under § 1.48–1(d) is also treated as real property for purposes of this section. Local law is not controlling in determining whether property is real property for purposes of this section.

(4) *Applicable financial statement.* The *applicable financial statement* is the taxpayer's financial statement listed in paragraphs (b)(4)(i) through (iii) of this section that has the highest priority (including within paragraph (b)(4)(ii) of this section). The financial statements are, in descending priority—

(i) A financial statement required to be filed with the Securities and Exchange Commission (SEC) (the 10–K or the Annual Statement to Shareholders);

(ii) A certified audited financial statement that is accompanied by the report of an independent CPA (or in the case of a foreign entity, by the report of a similarly qualified independent professional), that is used for—

(A) Credit purposes,

(B) Reporting to shareholders, partners, or similar persons; or

(C) Any other substantial non-tax purpose; or

(iii) A financial statement (other than a tax return) required to be provided to the Federal or a state government or any Federal or state agencies (other than the SEC or the Internal Revenue Service).

(c) *Coordination with other provisions of the Internal Revenue Code*—(1) *In general.* Nothing in this section changes the treatment of any amount that is specifically provided for under any provision of the Code or regulations (other than section 162(a) or section 212 and the regulations under those sections). See, for example, § 1.263A–1(e)(3), requiring taxpayers to capitalize costs that directly benefit or are incurred by reason of the performance of the production or resale activities, including repair and maintenance costs allocable to property produced or acquired for resale.

(2) *Example.* The following example illustrates the rules of this paragraph (c):

Example. Railroad rolling stock. X is a railroad that properly treats amounts paid for the rehabilitation of railroad rolling stock as deductible expenses under section 263(d). X is not required to capitalize the amounts paid

because nothing in this section changes the treatment of amounts specifically provided for under section 263(d).

(d) *Improved property*—(1) *Capitalization rule.* Except as provided in the optional regulatory accounting method in paragraph (i) of this section or under any repair allowance method published in accordance with paragraph (j) of this section, a taxpayer must capitalize the aggregate of related amounts paid to improve a unit of property, whether the improvements are made by the taxpayer or by a third party, and whether the taxpayer is an owner or lessee of the property. For purposes of this section, a unit of property includes units of property for which the acquisition or production costs were deducted as materials and supplies under § 1.162–3(a)(1) or under the de minimis rule in § 1.263(a)–2(d)(4). See section 263A for the costs required to be capitalized to property produced by the taxpayer or to property acquired for resale; section 1016 for adding capitalized amounts to the basis of the unit of property; and section 168 for the treatment of additions or improvements for depreciation purposes. For purposes of this section, a unit of property is improved if the amounts paid for activities performed after the property is placed in service by the taxpayer—

(i) Result in a betterment to the unit of property (see paragraph (f) of this section); or

(ii) Restore the unit of property (see paragraph (g) of this section); or

(iii) Adapt the unit of property to a new or different use (see paragraph (h) of this section).

(2) *Determining the appropriate unit of property*—(i) *In general.* The unit of property rules in this paragraph (d)(2) apply only for purposes of section 263(a) and §§ 1.263(a)–1, 1.263(a)–2, 1.263(a)–3, and 1.162–3(d). In general, the unit of property determination is based upon the functional interdependence standard provided in paragraph (d)(2)(iii)(A) of this section. However, special rules are provided for buildings (see paragraph (d)(2)(ii) of this section), plant property (see paragraph (d)(2)(iii)(B) of this section), and network assets (see paragraph (d)(2)(iii)(C) of this section). Additional rules are provided if a taxpayer has assigned different financial statement economic useful lives or MACRS classes or depreciation methods to components of property (see paragraph (d)(2)(iii)(D) of this section). Property that is aggregated and subject to a general asset account election or accounted for in a multiple asset account (that is, pooled) may not be treated as a single unit of property. In addition, an improvement to a unit of property as determined under this section, other than a leasehold improvement, is not a unit of property separate from the unit of property improved.

(ii) *Buildings and structural components.* In the case of a building (as defined in § 1.48–1(e)(1)), the building and its structural components (as defined in § 1.48–1(e)(2)) are a single unit of property. In the case of a leasehold improvement made by a lessee and that is section 1250 property, the leasehold improvement is a separate unit of property. In the case of a taxpayer that owns or occupies an individual unit in a building with multiple units (such as a condominium or cooperative), the unit of property is the individual unit owned and/or occupied by the taxpayer.

(iii) *Property other than buildings*—(A) *In general.* Except as provided in paragraph (d)(2)(iii)(B), (C) and (D) of this section, in the case of real or personal property other than property described in paragraph (d)(2)(ii) of this section, all the components that are functionally interdependent comprise a single unit of property. Components of property are functionally interdependent if the placing in service of one component by the taxpayer is dependent on the placing in service of the other component by the taxpayer.

(B) *Plant property*—(1) *Definition.* For purposes of this paragraph (d)(2) of this section, the term *plant property* means functionally interdependent machinery or equipment, other than network assets, used to perform an industrial process, such as manufacturing, generation, warehousing, distribution, automated materials handling in service industries, or other similar activities.

(2) *Unit of property for plant property.* In the case of plant property, a unit of property is comprised of each component (or group of components) within the unit of property determined under the general rule of paragraph (d)(2)(iii)(A) of this section that performs a discrete and major function or operation within the functionally interdependent machinery or equipment.

(C) *Network assets*—(*1*) *Definition.* For purposes of this paragraph (d)(2), the term *network assets* means railroad track, oil and gas pipelines, water and sewage pipelines, power transmission and distribution lines, and telephone and cable lines that are owned or leased by taxpayers in each of those respective industries. The term includes, for example, trunk and feeder lines, pole lines, and buried conduit. It does not include property that would be included as a structural component of a building under paragraph (d)(2)(ii) of this section, nor does it include separate property that is adjacent to, but not part of a network asset, such as bridges, culverts, or tunnels.

(*2*) [Reserved]

(D) *Additional rules.* Notwithstanding the unit of property determination under paragraphs (d)(2)(iii)(A), (B), and (C) of this section, a component (or a group of components) of a unit property must be treated as a separate unit of property if—

(*1*) At the time the unit of property (as determined under paragraph (d)(2)(iii)(A), (B), and (C) of this section) is placed in service by the taxpayer (without regard to subsequent improvements), the taxpayer has recorded on its books and records for financial or regulatory accounting purposes an economic useful life for the component that is different from the economic useful life of the unit of property of which the component is a part; or

(*2*) The taxpayer has properly treated the component as being within a different class of property under section 168(e) (MACRS classes) than the class of the unit of property of which the component is a part or, the taxpayer, at the time the component was placed in service by the taxpayer, has properly depreciated the component using a different depreciation method under section 167 or section 168 than the depreciation method of the unit of property of which the component is a part.

(iv) *Examples.* The rules of this paragraph (d)(2) are illustrated by the following examples, in which it is assumed that the taxpayer has not made a general asset account election with regard to property or accounted for property in a multiple asset account.

Example 1. Buildings and structural components; plant property. X owns a building containing various types of manufacturing equipment that are not structural components of the building. Because the property is a building, as defined in § 1.48–1(e)(1), the unit of property for the building must be determined under paragraph (d)(2)(ii) of this section. Under the rules of that paragraph, X must treat the building and all its structural components as a single unit of property. In addition, because the manufacturing equipment contained within the building constitutes property other than a building, the units of property for the manufacturing equipment are initially determined under the general rule in paragraph (d)(2)(iii)(A) of this section and are therefore comprised of all the components that are functionally interdependent. Moreover, because the manufacturing equipment is plant property, under

paragraph (d)(2)(iii)(B) of this section, the units of property under the general rule are further divided into smaller units of property by determining the components (or groups of components) that perform discrete and major functions within the plant. Finally, X must apply the additional rules in paragraph (d)(2)(iii)(D) of this section to determine whether any of the units of property determined under paragraphs (d)(2)(iii)(A) and (B) of this section contain components that must be treated as separate units of property.

Example 2. Buildings and structural components; property other than plants. X, a manufacturer, owns a building adjacent to its manufacturing facility that contains office space and related facilities for X's employees that manage and administer X's manufacturing operations. The office building contains equipment, such as desks, chairs, computers, telephones, and bookshelves, that are not structural components of the building. Because the office building is a building, as defined in § 1.48–1(e)(1), the unit of property for the building must be determined under paragraph (d)(2)(ii) of this section. Under the rules of that paragraph, X must treat the office building and all its structural components as a single unit of property. In addition, because the equipment contained within the office building constitutes property other than a building, the units of property for the office equipment are initially determined under the general rule in paragraph (d)(2)(iii)(A) of this section and are comprised of the groups of components that are functionally interdependent. X then must apply the additional rules in paragraph (d)(2)(iii)(D) of this section to determine whether any of the units of property determined under paragraph (d)(2)(iii)(A) of this section contain components that must be treated as separate units of property.

Example 3. Plant property; discrete and major function. X is an electric utility company that operates a power plant to generate electricity. The power plant includes a structure that is not a building under § 1.48–1(e)(1), four pulverizers that grind coal, one boiler that produces steam, one turbine that converts the steam into mechanical energy, and one generator that converts mechanical energy into electrical energy. In addition, the turbine contains a series of blades that cause the turbine to rotate when affected by the steam. When X placed the plant into service, X recorded all the components of the plant as having the same economic useful life on its books and records for financial and regulatory accounting purposes. X also treated all the components of the plant as being within the same class of property under section 168(e) and has depreciated all the components using the same depreciation methods. Because the plant is composed of real and personal tangible property other than a building, the unit of property for the generating equipment is initially determined under the general rule in paragraph (d)(2)(iii)(A) of this section and is comprised of all the components that are functionally interdependent. Under this rule, the initial unit of property is the entire plant because the components of the plant are functionally interdependent. However, because the power plant is plant property under paragraph (d)(2)(iii)(B) of this section, the initial unit of property is further divided into smaller units of property by determining the components (or groups of components) that perform discrete and major functions within the plant. Under this paragraph, X must treat the structure, the boiler, the turbine, and the generator each as a separate unit of property, and each of the four pulverizers as a separate unit of property because each of these components performs a discrete and major function within the power plant. X is not required to treat components, such as the turbine blades, as separate units of property because each of these components does not perform a discrete and major function within the plant.

Example 4. Plant property; discrete and major function. X is engaged in a uniform and linen rental business that operates a plant to treat and launder items used in its business. Within the plant X utilizes an assembly line-like process that incorporates many different machines and equipment to launder and prepare the items to be returned to customers. X utilizes two laundering lines in its plant, each of which can operate independently. One line is used for uniforms and another line is used for linens. Both lines incorporate several sorters, boilers, washers, dryers, ironers, folders, and waste water treatment systems. Because the laundering equipment contained within the plant is personal property, the unit of property for the laundering equipment is initially determined under the general rule in paragraph (d)(2)(iii)(A) of this section and is comprised of all the components that are functionally interdependent. Under this rule, the initial units of property are each laundering line because each line is functionally independent and is comprised of components that are functionally interdependent. However, because each line is comprised of plant property under paragraph (d)(2)(iii)(B) of this section, the initial units of property are further divided into smaller units of property by determining the components (or groups of components) that perform discrete and major functions within the line. Under paragraph (d)(2)(iii)(B) of this section, X must treat each sorter, boiler, washer, dryer, ironer, folder, and waste water treatment system in each line as a separate unit of property because each of these components performs a discrete and major function within the line. Finally, X must apply the additional rules in paragraph (d)(2)(iii)(D) of this section to determine whether any of the units of property determined under paragraph (d)(2)(iii)(B) of this section contain components that must be treated as separate units of property.

Example 5. Plant property; industrial process. X operates a restaurant that prepares and serves food to retail customers. Within its restaurant, X has a large piece of equipment that uses an assembly line-like process to prepare and cook tortillas that X serves to its customers. Because the tortilla-making equipment is personal property, the unit of property for the equipment is initially determined under the general rule in paragraph (d)(2)(iii)(A) of this section and is comprised of all the components that are functionally interdependent. Under this rule, the initial unit of property is the entire tortilla-making equipment because the various components of the equipment are functionally interdependent. Although the equipment is used to perform a manufacturing process, the equipment is not being used in an industrial process, as it performs a small-scale function as part of X's retail restaurant operations. Therefore, the equipment is not plant property under paragraph (d)(2)(iii)(B) of this section. Finally, X must apply the additional rules in paragraph (d)(2)(iii)(D) of this section to determine whether the equipment contains components that must be treated as separate units of property.

Example 6. Personal property. X owns locomotives that it uses in its railroad business. Each locomotive consists of various components, such as an engine, generators, batteries and trucks. X acquired a locomotive with all its components and recorded all the components as having the same economic useful life on its books and records for financial and regulatory accounting. X also treated all the components of the locomotive as being within the same class of property under section 168(e) and has depreciated all the components using the same depreciation methods. Because X's locomotive is property other than a building, the initial unit of property is determined under paragraph (d)(2)(iii)(A) of this section. Under this paragraph, the locomotive is a single unit of property because it consists entirely of components that are functionally interdependent. Because the additional rules under paragraph (d)(2)(iii)(D) of this section do not apply under these facts, the locomotive is a single unit of property.

Example 7. Personal property. X is engaged in the business of transporting freight throughout the United States. To conduct its business, X owns a fleet of tractors and trailers. Each tractor and trailer is comprised of various components, including tires. X purchases a truck trailer with all of its components, including 16 tires. At the time the trailer was placed in service by X, X treated the trailer and the tires as being within the same class of property under section 168(e) and has depreciated all the components using the same depreciation methods. However, on its books and records for financial accounting purposes, X recorded economic useful lives for the tires that were different from the economic useful life that it recorded for the trailer. Because X's trailer is property other than a building, the initial units of property for the trailer are determined under the general rule in paragraph (d)(2)(iii)(A) of this section and are comprised of all the components that are functionally interdependent. Under this rule, the truck trailer, including its 16 tires, is a single unit of property because the trailer and the tires are functionally interdependent (that is, the placing in service of the tires is dependent upon the placing in service of the trailer). X then must apply the additional rules in paragraph (d)(2)(iii)(D) of this section to determine whether the initial unit of property determined under paragraph

(d)(2)(iii)(A) of this section contains components that must be treated as separate units of property. Under paragraph (d)(2)(iii)(D)(*1*) of this section, because X recorded on its books and records economic useful lives for the tires that are different from the economic useful lives that it recorded for the trailer, the tires must be treated as separate units of property.

Example 8. Personal property. X provides legal services to customers. X purchased a laptop computer and a printer to be used by its employees in providing services. When X placed the computer and printer into service, X recorded both items and all their components as having the same economic useful life on its books and records for financial accounting purposes. X also treated the computer and printer and all their components as being within the same class of property under section 168(e) and has depreciated all the components using the same depreciation methods. Because the computer and printer are property other than a building, the initial units of property are determined under the general rule in paragraph (d)(2)(iii)(A) of this section and are comprised of the components that are functionally interdependent. Under this paragraph (d)(2)(iii)(A), the computer and the printer are separate units of property because the computer and the printer are not components that are functionally interdependent (that is, the placing in service of the computer is not dependent on the placing in service of the printer). The additional rules in paragraph (d)(2)(iii)(D) of this section do not apply under these facts. Accordingly, the computer and the printer each constitute separate units of property.

(3) *Compliance with regulatory requirements.* For purposes of this section, a Federal, state, or local regulator's requirement that a taxpayer perform certain repairs or maintenance on a unit of property to continue operating the property is not relevant in determining whether the amount paid improves the unit of property.

(4) *Repairs and maintenance performed during an improvement*—(i) *In general.* A taxpayer must capitalize all the direct costs of an improvement and all the indirect costs (including otherwise deductible repair costs) that directly benefit or are incurred by reason of an improvement in accordance with the rules under section 263A. Repairs and maintenance that do not directly benefit or are not incurred by reason of an improvement are not required to be capitalized under section 263(a), regardless of whether they are made at the same time as an improvement.

(ii) *Exception for individuals' residences.* A taxpayer who is an individual may capitalize amounts paid for repairs and maintenance that are made at the same time as substantial capital improvements to property not used in the taxpayer's trade or business or for the production of income if the repairs are done as part of a remodeling of the taxpayer's residence.

(5) *Aggregate of related amounts.* For purposes of paragraph (d)(1) of this section, the aggregate of related amounts paid to improve a unit of property may be incurred over a period of more than one taxable year. Whether amounts are related to the same improvement depends on the facts and circumstances of the activities being performed and whether the costs are incurred by reason of a single improvement or directly benefit a single improvement.

(e) *Safe harbor for routine maintenance*—(1) *In general.* An amount paid for routine maintenance performed on a unit of property is deemed to not improve that unit of property. Routine maintenance is the recurring activities that a taxpayer expects to perform as a result of the taxpayer's use of the unit of property to keep the unit of property in its ordinarily efficient operating condition. Routine maintenance activities include, for example, the inspection, cleaning, and testing of the unit of property, and the replacement of parts of the unit of property with comparable and commercially available and reasonable replacement parts. The activities are routine only if, at the time the unit of property is placed in service by the taxpayer, the taxpayer reasonably expects to perform the activities more than once during the class life (as defined in paragraph (e)(4) of this section) of the unit of property. Among the factors to be considered in determining whether a taxpayer is performing routine maintenance are the recurring nature of the activity, industry practice, manufacturers' recommendations, the taxpayer's experience, and the taxpayer's treatment of the activity on its applicable financial statement (as defined in paragraph (b)(4) of this section). With respect to a taxpayer that is a lessor of a unit of property, the taxpayer's use of the unit of property includes the lessee's use of the unit of property.

(2) *Exceptions.* Routine maintenance does not include the following—

(i) Amounts paid for the replacement of a component of a unit of property if the taxpayer has properly deducted a loss for that component (other than a casualty loss under § 1.165–7);

(ii) Amounts paid for the replacement of a component of a unit of property if the taxpayer has properly taken into account the adjusted basis of the component in realizing gain or loss resulting from the sale or exchange of the component;

(iii) Amounts paid for the repair of damage to a unit of property for which the taxpayer has taken a basis adjustment as a result of a casualty loss under section 165 or relating to a casualty event described in section 165; and

(iv) Amounts paid to return a unit of property to its former ordinarily efficient operating condition, if the property has deteriorated to a state of disrepair and is no longer functional for its intended use.

(3) *Rotable or temporary spare parts.* For purposes of paragraph (e)(1) of this section, amounts paid for routine maintenance include routine maintenance performed on (and with regard to) rotable and temporary spare parts. But see § 1.162–3(b), which provides that rotable and temporary spare parts are used or consumed by the taxpayer in the taxable year in which the taxpayer disposes of the part.

(4) *Class life.* The class life of a unit of property is the recovery period prescribed for the property under section 168(g)(2) and (3) for purposes of the alternative depreciation system, regardless of whether the property is depreciated under section 168(g). For purposes of determining class life under this paragraph (e), section 168(g)(3)(A) (relating to tax-exempt use property subject to lease) does not apply.

(5) *Examples.* The following examples illustrate the rules of this paragraph (e).

Example 1. Routine maintenance on rotable component. (i) X is a commercial airline engaged in the business of transporting passengers and freight throughout the United States and abroad. To conduct its business, X owns or leases various types of aircraft. As a condition of maintaining its airworthiness certification for these aircraft, X is required by the Federal Aviation Administration (FAA) to establish and adhere to a continuous maintenance program for each aircraft within its fleet. These programs, which are designed by X and the aircraft's manufacturer and approved by the FAA, are incorporated into each aircraft's maintenance manual. The maintenance manuals require a variety of periodic maintenance visits at various intervals. One type of maintenance visit is an engine shop visit (ESV), which X expects to perform on its aircraft engines approximately every 4 years in order to keep its aircraft in its ordinarily efficient operating condition. In 2004, X purchased a new aircraft and four new engines to use in that aircraft and later, in other aircraft in its fleet. The aircraft engines are rotable spare parts because they are removable from the aircraft, and repaired and reinstalled on other aircraft or stored for later installation on other aircraft. See § 1.162–3(b) (treatment of materials and supplies). In 2008, X performs its first ESV on the aircraft engines. The ESV includes disassembly, cleaning, inspection, repair, replacement, reassembly, and testing of the

engine and its component parts. During the ESV, the engine is removed from the aircraft and shipped to an outside vendor who performs the ESV. If inspection or testing discloses a discrepancy in a part's conformity to the specifications in X's maintenance program, the part is repaired, or if necessary, replaced with a comparable and commercially available and reasonable replacement part. After the ESVs the engines are returned to X to be reinstalled on another aircraft or stored for later installation. Assume the unit of property for X's aircraft is the entire aircraft, including the aircraft engines, and that the class life for X's aircraft is 12 years. Assume that none of the exceptions set out in paragraph (e)(2) of this section applies to the costs of performing the ESVs.

(ii) Because the ESVs involve the recurring activities that X expects to perform as a result of its use of the aircraft to keep the aircraft in ordinarily efficient operating condition, and consist of maintenance activities that X expects to perform more than once during the 12 year class life of the aircraft, X's ESVs are within the routine maintenance safe harbor under paragraph (e) of this section. Accordingly, the amounts paid by X for the ESVs are deemed not to improve the aircraft and are not required to be capitalized under paragraph (d)(1) of this section. For the treatment of costs to acquire the engines, see § 1.162–3.

Example 2. Routine maintenance after economic useful life. Assume the same facts as in *Example 1*, except that X incurs costs to perform an ESV on one of its aircraft engines in 2024, after the end of the economic useful life that X anticipated for the aircraft. Because this ESV involves the same routine maintenance activities that were performed on aircraft engines in *Example 1*, this ESV also is within the routine maintenance safe harbor under paragraph (e) of this section. Accordingly, the amounts paid by X for this ESV, even though performed after the economic useful life of the aircraft, are deemed not to improve the aircraft and are not required to be capitalized under paragraph (d)(1) of this section.

Example 3. Routine maintenance resulting from prior owner's use. (i) In January 2008, X purchases a used machine for use its manufacturing operations. Assume that the machine is the unit of property and has a class life of 10 years. The machine is fully operational at the time it is purchased by X and is immediately placed in service in X's business. At the time it is placed in service by X, X expects to perform manufacturer recommended scheduled maintenance on the machine approximately every three years. The scheduled maintenance includes the cleaning and oiling of the machine, the inspection of parts for defects, and the replacement of minor items such as springs, bearings, and seals with comparable and commercially available and reasonable replacement parts. At the time the machine is purchased, it is approaching the end of a three-year scheduled maintenance period. As a result, in February 2008, X incurs costs to perform the manufacturer recommended scheduled maintenance. Assume that none of the exceptions set out in paragraph (e)(2) of this section apply to the amounts paid for the scheduled maintenance.

(ii) The majority of the costs incurred by X do not qualify under the routine maintenance safe harbor in paragraph (e) of this section because the costs were primarily incurred as a result of the prior owner's use of the property and not X's use. The condition of the machine at the time that it was placed in service by X was that of a machine nearing the end of a scheduled maintenance period. Accordingly, the amounts paid by X for the scheduled maintenance resulting from the prior owner's use of the property must be capitalized if those amounts result in a betterment under paragraph (f) of this section, including the amelioration of a material condition or defect, or otherwise result in an improvement under paragraph (d)(1) of this section. See also section 263A requiring taxpayers to capitalize the direct and allocable share of indirect costs of property produced or acquired for resale.

Example 4. Routine maintenance resulting from new owner's use. Assume the same facts as in *Example 3*, except that after X incurs costs for the maintenance in 2008, X continues to operate the machine in its manufacturing business. In 2011, X incurs costs to perform the next scheduled manufacturer recommended maintenance on the machine. Assume that the scheduled maintenance activities performed are the same as those performed in *Example 3* and that none of the exceptions set out in paragraph (e)(2) of this section apply to the amounts paid for the scheduled maintenance. Because the scheduled maintenance performed in 2011 involves the recurring activities that X performs as a result of its use of the machine, keeps the machine in an ordinarily efficient operating condition, and consists of maintenance activities that X expects to perform more than once during the 10 year class life of the machine, X's scheduled maintenance costs are within the routine maintenance safe harbor under paragraph (e) of this section. Accordingly, the amounts paid by X for the scheduled maintenance in 2011 are deemed not to improve the machine and are not required to be capitalized under paragraph (d)(1) of this section. However, because the amounts paid for the scheduled maintenance are incurred by reason of X's manufacturing operations, X is required to capitalize the amounts paid for the maintenance to products produced by X. See § 1.263A–1(e)(3)(ii).

Example 5. Routine maintenance; replacement of substantial structural part. X is in the business of producing commercial products for sale. As part of the production process, X places raw materials into lined containers in which a chemical reaction is used to convert raw materials into the finished product. The lining is a substantial structural part of the container, and comprises 60% of the total physical structure of the container. Assume that each container, including its lining, is the unit of property and that a container has a class life of 12 years. At the time that X placed the container into service, X was aware that approximately every three years, X would be required to replace the lining in the container with comparable and commercially available and reasonable replacement materials. At the end of that period, the container will continue to function, but will become less efficient and the replacement of the lining will be necessary to keep the container in an ordinarily efficient operating condition. In 2003, X acquired 10 new containers and placed them into service. In 2006, 2009, 2011, and 2014, X pays amounts to replace the containers' linings with comparable and commercially available and reasonable replacement parts. Assume that none of the exceptions set out in paragraph (e)(2) of this section apply to the amounts paid for the replacement linings. Because the replacement of the linings involves recurring activities that X expects to perform as a result of its use of the containers to keep the containers in their ordinarily efficient operating condition, and consists of maintenance activities that X expects to perform more than once during the 12 year class lives of the containers, X's lining replacement costs are within the routine maintenance safe harbor under paragraph (e) of this section. Accordingly, the amounts paid by X for the replacement of the container linings are deemed not to improve the containers and are not required to be capitalized under paragraph (d)(1) of this section. However, because the amounts paid to replace the container linings are incurred by reason of X's manufacturing operations, X is required to capitalize the amounts paid for the replacements to products produced by X. See § 1.263A–1(e)(3)(ii).

Example 6. Routine maintenance once during class life. X is a Class I railroad that owns a fleet of freight cars. Assume that a freight car, including all its components, is a unit of property and has a class life of 14 years. At the time that X places a freight car into service, X expects to perform cyclical reconditioning to the car every 8 to 10 years in order to keep the freight car in ordinarily efficient operating condition. During this reconditioning, X incurs costs to disassemble, inspect, and recondition and/or replace components of the freight car with comparable and commercially available and reasonable replacement parts. Ten years after the freight car is placed in service by X, X incurs costs to perform a cyclical reconditioning on the car. Because X expects to perform the reconditioning only once during the 14 year class life of the freight car, the costs incurred for reconditioning do not qualify for the routine maintenance safe harbor under paragraph (e) of this section. Accordingly, X must capitalize the amounts paid for the reconditioning of the freight car if these amounts result in an improvement under paragraph (d)(1) of this section.

Example 7. Routine maintenance on non-rotable part. X is a towboat operator that owns and leases a fleet of towboats. Each towboat is equipped with two diesel-powered engines. Assume that each towboat, including its engines, is the unit of property and that a towboat has a class life of 18 years. At the time that X places its towboats into service, X is aware that approximately every three to four years, X will need to perform scheduled maintenance on the two towboat engines to keep the engines in their

ordinarily efficient operating condition. This maintenance is completed while the engines are attached to the towboat and involves the cleaning and inspecting of the engines to determine which parts are within acceptable operating tolerances and can continue to be used, which parts must be reconditioned to be brought back to acceptable tolerances, and which parts must be replaced. Engine parts replaced during these procedures are replaced with comparable and commercially available and reasonable replacement parts. Assume the towboat engines are not rotable spare parts under § 1.162–3(b). In 2005, X acquired a new towboat, including its two engines, and placed the towboat into service. In 2009, X incurs amounts to perform scheduled maintenance on both engines in the towboat. Assume that none of the exceptions set out in paragraph (e)(2) of this section apply to the scheduled maintenance costs. Because the scheduled maintenance involves recurring activities that X expects to perform more than once during the 18 year class life of the towboat. This maintenance results from X's use of the towboat, and is performed to keep the towboat in an ordinarily efficient operating condition, the scheduled maintenance on X's towboat is within the routine maintenance safe harbor under paragraph (e) of this section. Accordingly, the amounts paid by X for the scheduled maintenance to its towboat engines in 2009 are deemed not to improve the towboat and are not required to be capitalized under paragraph (d)(1) of this section.

Example 8. Routine maintenance with betterments. Assume the same facts as *Example 7*, except that in 2013, X's towboat engines are due for another scheduled maintenance visit. At this time X decides to upgrade the engines to increase their horsepower and propulsion, which would permit the towboats to tow heavier loads. Accordingly, in 2013 X incurs costs to perform many of the same activities that it would perform during the typical scheduled maintenance activities such as cleaning, inspecting, reconditioning, and replacing minor parts, but at the same time, X incurs costs to upgrade certain engine parts to increase the towing capacity of the boats in excess of the capacity when the boats were placed in service by X. Both the scheduled maintenance procedures and the replacement of parts with new and upgraded parts are necessary to increase the horsepower of the engines and the towing capacity of the boat. Thus, the work done on the engines encompasses more than the recurring activities that X expected to perform as a result of its use of the towboats and did more than keep the towboat in its ordinarily efficient operating condition. In addition, the scheduled maintenance procedures directly benefit and are incurred by reason of the upgrades. Therefore, the amounts paid by X in 2013 for the maintenance and upgrade of the engines do not qualify for the routine maintenance safe harbor described under paragraph (e) of this section. These amounts must be capitalized if they result in a betterment under paragraph (f) of this section, including a material increase in the capacity of the towboat, or otherwise result in an improvement under paragraph (d)(1) of this section. See also section 263A requiring taxpayers to capitalize all the direct costs of an improvement to property and all the indirect costs that directly benefit or are incurred by reason of an improvement to property.

Example 9. Exceptions to routine maintenance. X owns and operates a farming and cattle ranch with an irrigation system that provides water for crops. Assume that each canal in the irrigation system is a single unit of property and has a class life of 20 years. When X placed the canals into service, X expected to have to perform major maintenance on the canals every 3 years to keep the canals in their ordinarily efficient operating condition. This maintenance included draining the canals, and then cleaning, inspecting, repairing, reconditioning or replacing parts of the canal with comparable and commercially available and reasonable replacement parts. X placed the canals into service in 2005 and did not perform any maintenance on the canals until 2010. At that time, the canals had fallen into a state of disrepair and no longer functioned for irrigation. In 2010, X paid amounts to drain the canals, and do extensive cleaning, repairing, reconditioning and replacing parts of the canals with comparable and commercially available and reasonable replacement parts. Although the work performed on X's canals was similar to the activities that X expected to perform, but did not perform, every three years, the costs of these activities do not fall within the routine maintenance safe harbor. Specifically, under paragraph (e)(2)(iv) of this section, routine maintenance does not include amounts paid to return a unit of property to its former ordinary efficient operating condition if the property has deteriorated to a state of disrepair and is no longer functional for its intended use. Accordingly, amounts paid by X for work performed on the canals in 2010 must be capitalized if they result in improvements under paragraph (d)(1) of this section (for example, restorations under paragraph (g) of this section).

(f) *Capitalization of betterments*—(1) *In general.* A taxpayer must capitalize amounts paid that result in the betterment of a unit of property. An amount paid results in the betterment of a unit of property only if it—

(i) Ameliorates a material condition or defect that either existed prior to the taxpayer's acquisition of the unit of property or arose during the production of the unit of property, whether or not the taxpayer was aware of the condition or defect at the time of acquisition or production;

(ii) Results in a material addition (including a physical enlargement, expansion, or extension) to the unit of property; or

(iii) Results in a material increase in capacity (including additional cubic or square space), productivity, efficiency, strength, or quality of the unit of property or the output of the unit of property.

(2) *Application of general rule*—(i) *Facts and circumstances.* To determine whether an amount paid results in a betterment described in paragraph (f)(1) of this section, it is appropriate to consider all the facts and circumstances including, but not limited to, the purpose of the expenditure, the physical nature of the work performed, the effect of the expenditure on the unit of property, and the taxpayer's treatment of the expenditure on its applicable financial statement (as described in paragraph (b)(4) of this section).

(ii) *Unavailability of replacement parts.* If a taxpayer needs to replace part of a unit of property that cannot practicably be replaced with the same type of part (for example, because of technological advancements or product enhancements), the replacement of the part with an improved but comparable part does not, by itself, result in a betterment to the unit of property.

(iii) *Appropriate comparison*—(A) *In general.* In cases in which a particular event necessitates an expenditure, the determination of whether an expenditure results in a betterment of the unit of property is made by comparing the condition of the property immediately after the expenditure with the condition of the property immediately prior to the circumstances necessitating the expenditure.

(B) *Normal wear and tear.* If the expenditure is made to correct the effects of normal wear and tear to the unit of property (including the amelioration of a condition or defect that existed prior to the taxpayer's acquisition of the unit of property resulting from normal wear and tear), the condition of the property immediately prior to the circumstances necessitating the expenditure is the condition of the property after the last time the taxpayer corrected the effects of normal wear and tear (whether the amounts paid were for maintenance or improvements) or, if the taxpayer has not previously corrected the effects of normal wear and tear, the condition of the property when placed in service by the taxpayer.

(C) *Particular event.* If the expenditure is made as a result of a particular event, the condition of the property immediately prior to the circumstances necessitating the expenditure is the condition of the property immediately prior to the particular event.

(3) *Examples.* The following examples illustrate solely the rules of this paragraph (f). Even if capitalization is not required in an example under this paragraph (f), the amounts paid in the example may be subject to capitalization

under a different provision of this section.

Example 1. Amelioration of pre-existing material condition or defect. In 2008, X purchases a store located on a parcel of land that contained underground gasoline storage tanks left by prior occupants. Assume that the parcel of land is the unit of property. The tanks had leaked, causing soil contamination. X is not aware of the contamination at the time of purchase. In 2009, X discovers the contamination and incurs costs to remediate the soil. The remediation costs incurred by X result in a betterment to the land under paragraph (f)(1)(i) of this section because the costs were incurred to ameliorate a material condition or defect that existed prior to the taxpayer's acquisition of the land.

Example 2. Not amelioration of pre-existing condition or defect. X owned a building that was constructed with insulation that contained asbestos. The health dangers of asbestos were not widely known when the building was constructed. In 2008, X determined that certain areas of asbestos-containing insulation had begun to deteriorate and could eventually pose a health risk to employees. Therefore, X decided to remove the asbestos-containing insulation from the building and replace it with new insulation that was safer to employees, but no more efficient or effective than the asbestos insulation. Assume the building and its structural components (including the asbestos insulation) is the unit of property. The amounts paid to remove and replace the asbestos insulation are not required to be capitalized as a betterment under paragraphs (f)(1)(i) and (f)(2)(i) of this section because the asbestos, although later determined to be unsafe under certain circumstances, was not an inherent and material defect to the property. In addition, the removal and replacement of the asbestos did not result in any material additions to the building or material increases in capacity, productivity, efficiency, strength or quality of the building or the output of the building under paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

Example 3. Not amelioration of pre-existing material condition or defect. (i) In January 2008, X purchases a used machine for use its manufacturing operations. Assume that the machine is a unit of property and it has a class life of 10 years. The machine is fully operational at the time it is purchased by X and is immediately placed in service in X's business. At the time it is placed in service by X, X expects to perform manufacturer recommended scheduled maintenance on the machine every three years. The scheduled maintenance includes the cleaning and oiling of the machine, the inspection of parts for defects, and the replacement of minor items such as springs, bearings, and seals with comparable and commercially available and reasonable replacement parts. The scheduled maintenance does not result in any material additions or material increases in capacity, productivity, efficiency, strength or quality of the machine or the output of the machine. At the time the machine is purchased, it is approaching the end of a three-year scheduled maintenance period. As a result, in February 2008, X incurs costs to perform the manufacturer recommended scheduled maintenance to keep the machine in its ordinarily efficient operating condition.

(ii) The majority of the costs incurred by X do not qualify under the routine maintenance safe harbor in paragraph (e) of this section because the costs were primarily incurred as a result of the prior owner's use of the property and not the taxpayer's use. The condition of the machine at the time that it was placed in service by X was that of a machine nearing the end of a scheduled maintenance period. Accordingly, the amounts paid by X for the scheduled maintenance resulting from the prior owner's use of the property ameliorate conditions or defects that existed prior to X's ownership of the machine. Nevertheless, considering the facts and circumstances under paragraph (f)(2)(i) of this section, including the purpose and minor nature of the work performed, those amounts do not ameliorate a material condition or defect under paragraph (f)(1)(i) of this section and accordingly do not result in a betterment that must be capitalized under this paragraph (f).

Example 4. Not amelioration of pre-existing material condition or defect. In 2008, X purchases a used ice resurfacing machine for use in the operation of its ice skating rink. To comply with local regulations, X is required to routinely monitor the air quality in the ice skating rink. One week after X places the machine into service, during a routine air quality check, X discovers that the operation of the machine is adversely affecting the air quality in the skating rink. As a result, X incurs costs to inspect and retune the machine, which includes replacing minor components of the engine, which had worn out prior to X's acquisition of the machine. Assume the resurfacing machine, including the engine, is the unit of property. The routine maintenance safe harbor in paragraph (e) of this section does not apply to the amounts paid because the activities performed do more than return the machine to the condition that existed at the time it was placed in service by X. The amounts paid by X to inspect, retune, and replace minor components of the ice resurfacing machine ameliorated a condition or defect that existed prior to X's acquisition of the equipment. Nevertheless, considering the facts and circumstances under paragraph (f)(2)(i) of this section, including the purpose and minor nature of the work performed, these amounts do not ameliorate a material condition or defect under paragraph (f)(1)(i) of this section, result in a material addition to the machine under paragraph (f)(1)(ii) of this section, or result in a material increase in the capacity, productivity, efficiency, strength or quality of the machine or the output of the machine. Accordingly, the amounts paid by X to inspect, retune, and replace minor components of the machine do not result in a betterment that must be capitalized under this paragraph (f).

Example 5. Amelioration of material condition or defect; increase in quality. (i) In January 2009, X acquires a building for use in its business of providing assisted living services. Before and after the purchase, the building functions as an assisted living facility. However, at the time of the purchase, X is aware that the building is in a condition that is below the standards that X requires for facilities used in its business. Beginning in 2009 and over the next two years, while X continues to use the building as an assisted living facility, X incurs costs for repairs, maintenance, and the acquisition of new property to bring the facility into the high-quality condition for which X's facilities are known. The work includes repainting; replacing flooring materials, windows, and tiling and fixtures in bathrooms; replacing window treatments, furniture, and cabinets; and repairing or replacing roofing materials, heating and cooling systems. On its applicable financial statements, X capitalizes the costs of the repairs, maintenance, and acquisitions over the remaining economic useful life recorded for the building. Assume that the building, including its structural components, is a single unit of property and that each section 1245 property is a separate unit of property.

(ii) Considering the facts and circumstances under paragraph (f)(2)(i) of this section, including the purpose of the expenditures, the effect of the expenditures on the building, and the treatment of the expenditures in X's applicable financial statements, the amounts paid by X for repairs and maintenance to the building and its structural components ameliorated material conditions and defects that existed prior to X's acquisition of the building. In addition, these amounts materially increased the quality of the building as compared to the condition of the building when it was placed in service by X. Accordingly, the amounts paid by X for repairs and maintenance to the building and its structural components (that is, repainting, replacing windows, replacing bathroom fixtures, repairing and replacing roofing materials and heating and cooling systems) result in betterments that must be capitalized under this paragraph (f). Moreover, X is required to capitalize the amounts paid to acquire and install each section 1245 property, including the flooring materials, tiling, each window treatment, each item of furniture, and each cabinet, in accordance with § 1.263(a)–2(d).

Example 6. Not a betterment. X owns a nationwide chain of retail stores that sell a wide variety of items. To remain competitive in the industry, X periodically changes the layout and appearance of its stores. These changes include the reconfiguration of the stores to provide better exposure of the merchandise and cosmetic alterations to keep the store modern and attractive to customers. The work is not undertaken for the purpose of repairing damaged property but rather to renew the appearance of the property. X incurs costs to update 50 stores during the taxable year. In its applicable financial statement, X capitalizes all the costs of the updates over a 5-year period until which X anticipates it would have to update again. Assume that each store building, including its structural components, is a unit of property and that each section 1245 property within the store is a separate unit of property. Also assume that the work performed did not ameliorate any material conditions or defects that existed when X acquired the store

buildings or result in any material additions to the store buildings.

(ii) Considering the facts and circumstances under paragraph (f)(2)(i) of this section, including the purpose of the expenditure, the nature of the work performed, and the treatment of the work on X's applicable financial statements, the amounts paid by X for updates to its store buildings (including their structural components) do not result in material increases in capacity, productivity, efficiency, strength or quality of the store buildings. Accordingly, the amounts paid by X for the updates on the store buildings (including their structural components) do not result in betterments that must be capitalized under this paragraph (f). However, X is required to capitalize the amounts paid to acquire and install each section 1245 property in accordance with § 1.263(a)–2(d).

Example 7. Betterment; regulatory requirement. X owns a hotel in City that includes five foot high unreinforced terra cotta and concrete parapets with overhanging cornices around the entire roof perimeter. The parapets and cornices are in good condition. In 2008, City passes an ordinance setting higher safety standards for parapets and cornices because of the hazardous conditions caused by earthquakes. To comply with the ordinance, X replaces the old parapets and cornices with new ones made of glass fiber reinforced concrete, which makes them lighter and stronger than the original ones. They are attached to the hotel using welded connections instead of wire supports, making them more resistant to damage from lateral movement. Assume the hotel building and its structural components are the unit of property. The event necessitating the expenditure was the 2008 City ordinance. Prior to the ordinance, the old parapets and cornices were in good condition, but were determined by City to create a potential hazard. After the expenditure, the new parapets and cornices materially increased the structural soundness (that is, the strength) of the hotel building. Therefore, the amounts paid by X to replace the parapets and cornices must be capitalized because they resulted in a betterment to the hotel. City's requirement that X correct the potential hazard to continue operating the hotel is not relevant in determining whether the amount paid improved the hotel. See paragraph (d)(3) of this section.

Example 8. Not a betterment; regulatory requirement. X owns a meat processing plant. In 2008, X discovers that oil was seeping through the concrete walls of the plant, creating a fire hazard. Federal meat inspectors advise X that it must correct the seepage problem or shut down its plant. To correct the problem, X incurs costs to add a concrete lining to the walls from the floor to a height of about four feet and also to add concrete to the floor of the plant. Assume the plant building and its structural components are the unit of property. The event necessitating the expenditure was the seepage of the oil. Prior to the seepage, the plant did not leak and was functioning for its intended use. The expenditure did not result in a material addition or material increase in capacity, productivity, efficiency, strength or quality of the plant or its output of compared to the condition of the plant prior to the seepage of the oil. Therefore, the amounts paid by X to correct the seepage do not result in a betterment to the plant. X is not required to capitalize as an improvement under this paragraph (f) amounts paid to correct the seepage problem. The Federal meat inspectors' requirement that X correct the seepage to continue operating the plant is not relevant in determining whether the amount paid improved the plant. See paragraph (d)(3) of this section.

Example 9. Not a betterment; replacement with same part. X owns a small retail shop. In 2008, a storm damages the roof of X's shop by displacing numerous wooden shingles. X decides to replace all the wooden shingles on the roof and hires a contractor to replace all the shingles on the roof with new wooden shingles. Assume the shop building and its structural components are the unit of property. The event necessitating the expenditure was the storm. Prior to the storm, the retail shop was functioning for its intended use. The expenditure did not result in a material addition, or material increase in the capacity, productivity, efficiency, strength or quality of the shop or the output of the shop compared to the condition of the shop prior to the storm. Therefore, the amounts paid by X to reshingle the roof with wooden shingles do not result in betterment to the shop building. X is not required to capitalize as an improvement under this paragraph (f) amounts paid to replace the shingles.

Example 10. Not a betterment; replacement with comparable part. Assume the same facts as in *Example 9*, except that wooden shingles are not available on the market. X decides to replace all the wooden shingles with comparable asphalt shingles. The amounts paid by X to reshingle the roof with asphalt shingles do not result in a betterment to the shop, even though the asphalt shingles may be stronger than the wooden shingles. Because the wooden shingles could not practicably be replaced with new wooden shingles, the replacement of the old shingles with comparable asphalt shingles does not, by itself, result in an improvement to the shop. X is not required to capitalize as an improvement under this paragraph (f) amounts paid to replace the shingles.

Example 11. Betterment; replacement with improved parts. Assume the same facts as in *Example 9,* except that, instead of replacing the wooden shingles with asphalt shingles, X decides to replace all the wooden shingles with shingles made of lightweight composite materials that are maintenance-free and do not absorb moisture. The new shingles have a 50-year warranty and a Class A fire rating. The expenditure for these shingles resulted in a material increase in the quality of the shop building as compared to the condition of the shop building prior to the storm. X must capitalize amounts paid to reshingle the roof as an improvement under this paragraph (f) because they result in a betterment to the shop.

Example 12. Material increase in capacity. X owns a factory building with a storage area on the second floor. In 2008, X replaces the columns and girders supporting the second floor to permit storage of supplies with a gross weight 50 percent greater than the previous load-carrying capacity of the storage area. Assume the factory building and its structural components are the unit of property. X must capitalize as an improvement amounts paid for the columns and girders because they result in a material increase in the load-carrying capacity of the building. The comparison rule in paragraph (f)(2)(iii) of this section does not apply to these amounts paid because the expenditure was not necessitated by a particular event.

Example 13. Material increase in capacity. In 2008, X purchases harbor facilities consisting of a slip for the loading and unloading of barges and a channel leading from the slip to the river. At the time of purchase, the channel is 150 feet wide, 1,000 feet long, and 10 feet deep. To allow for ingress and egress and for the unloading of its barges, X needs to deepen the channel to a depth of 20 feet. X hires a contractor to dredge the channel to the required depth. Assume the channel is the unit of property. X must capitalize as an improvement amounts paid for the dredging because it resulted in a material increase in the capacity of the channel. The comparison rule in paragraph (f)(2)(iii) of this section does not apply to these amounts paid because the expenditure was not necessitated by a particular event.

Example 14. Not a material increase in capacity. Assume the same facts as in *Example 13,* except that the channel was susceptible to siltation and, by 2009, the channel depth had been reduced to 18 feet. X hired a contractor to redredge the channel to a depth of 20 feet. The event necessitating the expenditure was the siltation of the channel. Both prior to the siltation and after the redredging, the depth of the channel was 20 feet. Therefore, the amounts paid by X for redredging the channel did not result in a material addition to the unit of property or a material increase in the capacity, productivity, efficiency, strength or quality of the unit of property or the output of the unit of property. X is not required to capitalize as a betterment under paragraph (f) of this section amounts paid to redredge the channel.

Example 15. Not a material increase in capacity. X owns a building used in its trade or business. The first floor has a drop-ceiling. X decides to remove the drop-ceiling and repaint the original ceiling. Assume the building and its structural components are the unit of property. The removal of the drop-ceiling does not create additional capacity in the building that was not there prior to the removal. Therefore, the amounts paid by X to remove the drop-ceiling and repaint the original ceiling did not result in a material addition or a material increase to the capacity, productivity, efficiency, strength or quality of the unit of property or output of the unit of property. X is not required to capitalize as a betterment under this paragraph (f) amounts paid related to removing the drop-ceiling. The comparison rule in paragraph (f)(2)(iii) of this section does not apply to these amounts paid because the expenditure was not necessitated by a particular event.

(g) *Capitalization of restorations*—(1) *In general.* A taxpayer must capitalize amounts paid to restore a unit of property, including amounts paid in making good the exhaustion for which an allowance is or has been made. An amount is paid to restore a unit of property if it—

(i) Is for the replacement of a component of a unit of property and the taxpayer has properly deducted a loss for that component (other than a casualty loss under § 1.165–7);

(ii) Is for the replacement of a component of a unit of property and the taxpayer has properly taken into account the adjusted basis of the component in realizing gain or loss resulting from the sale or exchange of the component;

(iii) Is for the repair of damage to a unit of property for which the taxpayer has properly taken a basis adjustment as a result of a casualty loss under section 165, or relating to a casualty event described in section 165;

(iv) Returns the unit of property to its ordinarily efficient operating condition if the property has deteriorated to a state of disrepair and is no longer functional for its intended use;

(v) Results in the rebuilding of the unit of property to a like-new condition after the end of its economic useful life (see paragraph (g)(2) of this section); or

(vi) Is for the replacement of a major component or a substantial structural part of the unit of property (see paragraph (g)(3) of this section).

(2) *Rebuild to like-new condition*—(i) *In general.* For purposes of paragraph (g)(1)(v) of this section, the following definitions apply:

(1) *Like-new condition.* A unit of property is rebuilt to a like-new condition if it is brought to the status of new, rebuilt, remanufactured, or similar status under the terms of any Federal regulatory guideline or the manufacturer's original specifications.

(2) *Economic useful life.* The economic useful life of a unit of property is not necessarily the useful life inherent in the property but is the period over which the property may reasonably be expected to be useful to the taxpayer or, if the taxpayer is engaged in a trade or business or an activity for the production of income, the period over which the property may reasonably be expected to be useful to the taxpayer in its trade or business or for the production of income, as applicable. See § 1.167(a)–1(b) for the factors to be considered in determining this period.

(ii) *Exception.* An amount paid is not required to be capitalized under paragraph (g)(1)(v) of this section if it is paid during the recovery period prescribed in section 168(c) (taking into account the applicable convention) for the property, regardless of whether the property is depreciated under section 168(a).

(3) *Replacement of a major component or a substantial structural part*—(i) *In general.* For purposes of paragraph (g)(1)(vi) of this section, the replacement of a major component or a substantial structural part means the replacement of—

(*1*) A part or a combination of parts of the unit of property, the cost of which comprises 50 percent or more of the replacement cost of the unit of property; or

(*2*) A part or a combination of parts of the unit of property that comprise 50 percent or more of the physical structure of the unit of property.

(ii) *Exception.* An amount paid is not required to be capitalized under paragraph (g)(1)(vi) of this section if it is paid during the recovery period prescribed in section 168(c) (taking into account the applicable convention) for the property, regardless of whether the property is depreciated under section 168(a).

(4) *Examples.* The following examples illustrate solely the rules of this paragraph (g). Even if capitalization is not required in an example under the cited subparagraph under this paragraph (g), the amounts paid in the example may be subject to capitalization under a different provision of this section, or under a different subparagraph in this paragraph (g).

Example 1. Replacement of loss component. X owns a manufacturing building containing various types of manufacturing equipment. X does a cost segregation study of the manufacturing building and properly determines that a walk-in freezer in the manufacturing equipment is section 1245 property as defined in section 1245(a)(3). The freezer is not part of the HVAC system that relates to the general operation or maintenance of the building. The components of the walk-in freezer cease to function and X decides to replace them. X abandons the freezer components and properly recognizes a loss from the abandonment of the components. X replaces the abandoned freezer components with new components and incurs costs to acquire and install the new components. Under paragraph (g)(1)(i) of this section, X must capitalize the amounts paid to acquire and install the new freezer components because X replaced components for which it had properly deducted a loss.

Example 2. Replacement of sold component. Assume the same facts as in *Example 1* except that X did not abandon the components, but instead sold them to another party and properly recognized a loss on the sale. Under paragraph (g)(1)(ii) of this section, X must capitalize the amounts paid to acquire and install the new freezer components because X replaced components for which it had property taken into account the adjusted basis of the components in realizing a loss from the sale of the components.

Example 3. Restoration after casualty loss. X owns an office building that it uses in its trade or business. A storm damages the office building at a time when the building has an adjusted basis of $500,000. X deducts under section 165 a casualty loss in the amount of $50,000 and properly reduces its basis in the office building to $450,000. X hires a contractor to repair the damage to the building and pays the contractor $50,000 for the work. Under paragraph (g)(1)(iii) of this section, X must capitalize the $50,000 amount paid to the contractor because X properly adjusted its basis as a result of a casualty loss under section 165.

Example 4. Restoration after casualty event. Assume the same facts as in *Example 3,* except that X receives insurance proceeds of $50,000 after the casualty to compensate for its loss. X cannot deduct a casualty loss under section 165 because its loss was compensated by insurance. However, X properly reduces its basis in the property by the amount of the insurance proceeds. Under paragraph (g)(1)(iii) of this section, X must capitalize the $50,000 amount paid to the contractor because X has properly taken a basis adjustment relating to a casualty event described in section 165.

Example 5. Restoration of property in a state of disrepair. X owns and operates a farm with several barns and outbuildings. One of the outbuildings is not used or maintained by X on a regular basis and falls into a state of disrepair. The outbuilding previously was used for storage but can no longer be used for that purpose because the building is not structurally sound. X decides to restore the outbuilding and incurs costs to shore up the walls and replace the siding. Under paragraph (g)(1)(iv) of this section, X must capitalize the amounts paid to restore the outbuilding because they return the outbuilding to its ordinarily efficient operating condition after it had deteriorated to a state of disrepair and was no longer functional for its intended use.

Example 6. Rebuild of property to like-new condition before end of economic useful life. X is a Class I railroad that owns a fleet of freight cars. Freight cars have a recovery period of 7 years under section 168(c) and an economic useful life of 30 years. Every 8 to 10 years, X rebuilds its freight cars. Ten years after the freight car is placed in service by X, X performs a rebuild, which includes a complete disassembly, inspection, and reconditioning and/or replacement of components of the suspension and draft systems, trailer hitches, and other special equipment. X modifies the car to upgrade various components to the latest engineering standards. The freight car essentially is stripped to the frame, with all of its substantial components either reconditioned or replaced. The frame itself is the longest-lasting part of the car and is reconditioned. The walls of the freight car are replaced or are sandblasted and repainted. New wheels

are installed on the car. All the remaining components of the car are restored before they are reassembled. At the end of the rebuild, the freight car has been restored to rebuilt condition under the manufacturer's specifications. Assume the freight car is the unit of property. X is not required to capitalize under paragraph (g)(1)(v) of this section the amounts paid to rebuild the freight car because, although the amounts paid restore the freight car to like-new condition, the amounts were not paid after the end of the economic useful life of the freight car.

Example 7. Rebuild of property to like-new condition after end of economic useful life. Assume the same facts as in *Example 6*, except that X rebuilds the freight car 40 years after it is placed in service by X. Under paragraph (g)(1)(v) of this section, X must capitalize the amounts paid to rebuild the freight car because the amounts paid restore the freight car to like-new condition after the end of the economic useful life of the freight car.

Example 8. Replacement of major component. X is a common carrier that owns a fleet of petroleum hauling trucks. X replaces the existing engine, cab, and petroleum tank with a new engine, cab, and tank. The new engine and cab cost $25,000; the new tank costs $10,000. The cost of a new tractor is $50,000 and the cost of a new trailer is $30,000. Assume the tractor of the truck (which includes the cab and the engine) is a separate unit of property from the rest of the truck, and that the trailer (which contains the petroleum tank) is a separate unit of property from the rest of the truck. Also assume that X replaced the components after the end of the recovery periods under section 168(c) for the tractor and the trailer. The amounts paid for the new engine and cab comprise 50% of the cost of a new tractor and must be capitalized under paragraph (g)(1)(vi) of this section. The amounts paid for the new petroleum tank do not comprise 50% or more of the cost of a new trailer; however, the tank comprises more than 50% of the physical structure of the trailer. Therefore, the amounts paid for the new tank also must be capitalized under paragraph (g)(1)(vi) of this section.

Example 9. Repair performed during a restoration. Assume the same facts as in *Example 8,* except that, at the same time the engine and cab of the tractor are replaced, X paints the cab of the tractor with its company logo and fixes a broken taillight on the tractor. The repair of the broken taillight and the painting of the cab generally are deductible expenses under § 1.162–4. However, under paragraph (d)(4)(i) of this section, a taxpayer must capitalize all the direct costs of an improvement and all the indirect costs that directly benefit or are incurred by reason of an improvement in accordance with the rules under section 263A. Repairs and maintenance that do not directly benefit or are not incurred by reason of an improvement are not required to be capitalized under section 263(a), regardless of whether they are made at the same time as an improvement. Therefore, all amounts paid that directly benefit or are incurred by reason of the tractor restoration must be capitalized, including amounts paid for activities that usually would be deductible maintenance expenses, such as the painting of the cab. Amounts paid to repair the broken taillight, however, are not incurred by reason of the restoration of the tractor, nor do the amounts paid directly benefit the tractor restoration, despite that the repair was performed at the same time as the restoration. Thus, X must capitalize to the restoration of the tractor the amounts paid to paint the cab, but X is not required to capitalize to the restoration of the tractor the amounts paid to repair the broken taillight.

Example 10. Not a replacement of substantial structural part. X owns a large retail store. X discovers a leak in the roof of the store and hires a contractor to inspect and fix the roof. The contractor discovers that a major portion of the sheathing and rafters has rotted, and recommends the replacement of the entire roof. X pays the contractor to replace the roof. Assume the store and its structural components are the unit of property and that the roof does not comprise 50% or more of the physical structure of the store. Also assume the cost of the roof does not comprise 50% or more of the cost to acquire a new store. Consequently, the new roof is not a major component or substantial structural part of the store. Therefore, X is not required to capitalize under paragraph (g)(1)(vi) of this section the amounts paid to replace the roof.

Example 11. Related amounts to replace major component. (i) X owns a retail gasoline station, consisting of a paved area used for automobile access to the pumps and parking areas, a building used to market gasoline, and a canopy covering the gasoline pumps. The premises also consist of underground storage tanks (USTs) that are connected by piping to the pumps and are part of the machinery used in the immediate retail sale of gas. To comply with regulations issued by the Environmental Protection Agency, X is required to remove and replace leaking USTs. In 2008, X hires a contractor to perform the removal and replacement, which consists of removing the old tanks and installing new tanks with leak detection systems. The removal of the old tanks includes removing the paving material covering the tanks, excavating a hole large enough to gain access to the old tanks, disconnecting any strapping and pipe connections to the old tanks, and lifting the old tanks out of the hole. Installation of the new tanks includes placement of a liner in the excavated hole, placement of the new tanks, installation of a leak detection system, installation of an overfill system, connection of the tanks to the pipes leading to the pumps, backfilling of the hole, and replacement of the paving. Assume the new tanks comprise 50% or more of the physical structure of the gasoline distribution system. X also is required to pay a permit fee to the county to undertake the installation of the new tanks.

(ii) X pays the permit fee to the county on October 15, 2008. The contractor performs all of the required work and, on November 1, 2008, bills X for the costs of removing the old USTs. On November 15, 2008, the contractor bills X for the remainder of the work. Assume the gasoline distribution system is the unit of property. The USTs are major components of the gasoline distribution system. Therefore, under paragraphs (d)(5) and (g)(1)(vi) of this section, X must capitalize as an improvement to the distribution system the aggregate of related amounts paid to replace the USTs, which related amounts include the amount paid to the county, the amount paid to remove the old USTs, and the amount paid to install the new USTs (regardless that the amounts were separately invoiced and paid to two different parties).

Example 12. Minor part replacement; coordination with section 263A. X is in the business of smelting aluminum. X's aluminum smelting facility includes a plant where molten aluminum is poured into molds and allowed to solidify. Because of the potential of fire from a molten metal explosion, the plant's roof must be made of fire-resistant material. The roof must also be without leaks because rain water hitting the molten aluminum could cause an explosion. During 2008, X removed and replaced a major portion of the plant's roof decking and roofing material. Assume the plant building and its structural components are the unit of property and that the portion of the roof that is replaced is not a major component or substantial structural part of the building. X is not required to capitalize under paragraph (g)(1)(vi) of this section the amounts paid to remove and replace the roof decking and materials. However, under section 263A, all direct and indirect costs, including otherwise deductible costs, that directly benefit or are incurred by reason of X's manufacturing activities must be capitalized to the property produced by X. Therefore, because the amounts paid for the roof decking and materials are incurred by reason of X's manufacturing operations, the amounts paid must be capitalized under section 263A to the property produced by X.

(h) *Capitalization of amounts to adapt property to a new or different use*—(1) *In general.* Taxpayers must capitalize amounts paid to adapt a unit of property to a new or different use. In general, an amount is paid to adapt a unit of property to a new or different use if the adaptation is not consistent with the taxpayer's intended ordinary use of the unit of property at the time originally placed in service by the taxpayer.

(2) *Examples.* The following examples illustrate solely the rules of this paragraph (h). Even if capitalization is not required in an example under this paragraph (h), the amounts paid in the example may be subject to capitalization under a different provision of this section.

Example 1. New or different use. X is a manufacturer and owns a manufacturing facility that it has used for manufacturing since 1970, when it was placed in service by X. Assume the manufacturing facility is a unit of property. In 2008, X incurred costs to convert its manufacturing facility into a showroom for its business. To convert the facility, X replaces various structural components to provide a better layout for the

showroom and its offices. X also rewires and repaints the building as part of the conversion. None of the materials used, such as the wiring, are better than existing materials in the building. Under this paragraph (h), the amounts paid by X to convert the manufacturing facility into a showroom are paid to adapt the building to a new or different use because the conversion is not consistent with X's intended ordinary use of the property at the time it was placed in service. Therefore, X is required to capitalize these amounts under paragraph (h)(1) of this section.

Example 2. Not a new or different use. X owns a building, which is a unit of property, consisting of twenty retail spaces. The space was designed to be reconfigured; that is, adjoining spaces could be combined into one space. In 2008, one of the tenants expanded its occupancy to include two adjoining retail spaces. To facilitate the new lease, X incurred costs to remove the walls between the three retail spaces. Under this paragraph (h), the amounts paid by X to convert three retail spaces into one larger space for an existing tenant do not adapt X's building to a new or different use because the combination of retail spaces is consistent with X's intended, ordinary use of the building. Therefore, the costs are not required by this paragraph (h) to be capitalized.

Example 3. Not a new or different use. X owns a building, which is a unit of property, consisting of twenty retail spaces. X decides to sell the building. In anticipation of selling the building, X repaints the interior walls and refinishes the hardwood floors. Preparing the building for sale does not constitute a new or different use for the building. Therefore, amounts paid in preparing the building for sale are not required by this paragraph (h) to be capitalized.

Example 4. New or different use. Since 1930, X has owned a parcel of land on which it previously operated a manufacturing facility. Assume that the land is the unit of property. During the course of X's operation of the manufacturing facility, the land became contaminated with wastes from its manufacturing processes. In 1995, X discontinued manufacturing operations at the site. In 2008, X decides to sell the property to a developer that intends to use the property for residential housing. In anticipation of selling the land, X pays amounts to cleanup the land to a standard that is required for the land to be used for residential purposes. In addition, X pays amounts to regrade the land so that it can be used for residential purposes. Amounts paid by X to cleanup wastes that were discharged in the course of X's manufacturing operations do not adapt the land to a new or different use, regardless of the extent to which the land was cleaned. However, amounts to regrade the land so that it can be used for residential purposes adapts the land to a new or different use that is inconsistent with X's intended ordinary use of the property at the time it was placed in service. Accordingly, the amounts paid by X to regrade the land must be capitalized under paragraph (h)(1) of this section.

(i) *Optional regulatory accounting method*—(1) *In general.* This paragraph (i) provides an optional simplified method (the regulatory accounting method) for regulated taxpayers to determine whether amounts paid to repair, maintain, or improve tangible property are to be treated as deductible expenses or capital expenditures. A taxpayer that elects to use the regulatory accounting method described in paragraph (i)(3) of this section must use that method for property subject to regulatory accounting instead of determining whether amounts paid to repair, maintain, or improve property are capital expenditures or deductible expenses under the general principles of sections 162(a), 212, and 263(a). Thus, the capitalization rules in § 1.263(a)–3(d) (and the routine maintenance safe harbor described in paragraph (e) of this section) do not apply to amounts paid to repair, maintain, or improve property subject to regulatory accounting by taxpayers that elect to use the regulatory accounting method under this paragraph (i). However, section 263A continues to apply to costs required to be capitalized to property produced by the taxpayer or to property acquired for resale.

(2) *Eligibility for regulatory accounting method.* A taxpayer that is engaged in a trade or business in a regulated industry may use the regulatory accounting method under this paragraph (i). For purposes of this paragraph (i), a taxpayer in a regulated industry is a taxpayer that is subject to the regulatory accounting rules of the Federal Energy Regulatory Commission (FERC), the Federal Communications Commission (FCC), or the Surface Transportation Board (STB).

(3) *Description of regulatory accounting method.* Under the regulatory accounting method, a taxpayer must follow its method of accounting for regulatory accounting purposes in determining whether an amount paid improves property under this section. Therefore, a taxpayer must capitalize for Federal income tax purposes an amount paid that is capitalized as an improvement for regulatory accounting purposes. A taxpayer must not capitalize for Federal income tax purposes under this section an amount paid that is not capitalized as an improvement for regulatory accounting purposes. A taxpayer that uses the regulatory accounting method must use that method for all of its tangible property that is subject to regulatory accounting rules. The method does not apply to tangible property that is not subject to regulatory accounting rules.

(4) [Reserved]

(5) *Examples.* The rules of this paragraph (i) are illustrated by the following examples.

Example 1. Taxpayer subject to regulatory accounting rules of FERC. X is an electric utility company that operates a power plant to generate electricity. X is subject to the regulatory accounting rules of FERC and X chooses to use the regulatory accounting method under this paragraph (i). X does not capitalize on its books and records for regulatory accounting purposes the cost of repairs made to its turbines. Under the regulatory accounting method, X must not capitalize for Federal income tax purposes amounts paid for repairs made to its turbines.

Example 2. Taxpayer not subject to regulatory accounting rules of FERC. X is an electric utility company that operates a power plant to generate electricity. X previously was subject to the regulatory accounting rules of FERC but, for various reasons, X is no longer required to use FERC's regulatory accounting rules. X cannot use the regulatory accounting method provided in this paragraph (i).

Example 3. Taxpayer subject to regulatory accounting rules of FCC. X is a telecommunications company that is subject to the regulatory accounting rules of the FCC. X chooses to use the regulatory accounting method under this paragraph (i). The assets of X include a telephone central office switching center, which contains numerous switches and various switching equipment. X capitalizes on its books and records for regulatory accounting purposes the cost of replacing each switch. Under the regulatory accounting method, X is required to capitalize for Federal income tax purposes amounts paid to replace each switch.

Example 4. Taxpayer subject to regulatory accounting rules of STB. X is a Class I railroad that is subject to the regulatory accounting rules of the STB. X chooses to use the regulatory accounting method under this paragraph (i). X capitalizes on its books and records for regulatory accounting purposes the cost of locomotive rebuilds. Under the regulatory accounting method, X is required to capitalize for Federal income tax purposes amounts paid to rebuild its locomotives.

(j) *Repair allowance.* A taxpayer may use a repair allowance method of accounting that is identified in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(k) *Treatment of capital expenditures.* Amounts required to be capitalized under this section are capital expenditures and must be taken into account through a charge to capital account or basis, or in the case of property that is inventory in the hands of a taxpayer, through inclusion in inventory costs. See section 263A for the treatment of amounts referred to in this section as well as other amounts paid in connection with the production of real property and personal property,

including films, sound recordings, video tapes, books, or similar properties.

(l) *Recovery of capitalized amounts.* Amounts that are capitalized under this section are recovered through depreciation, cost of goods sold, or by an adjustment to basis at the time the property is placed in service, sold, used, or otherwise disposed of by the taxpayer. Cost recovery is determined by the applicable Code and regulation provisions relating to the use, sale, or disposition of property.

(m) [Reserved]

(n) *Effective/applicability date.* The rules in this section apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 9. Section 1.263A–1 is amended by adding paragraph (b)(14) as follows:

§ 1.263A–1 Uniform capitalization of costs.

* * * * *

(b) * * *

(14) *Property subject to de minimis rule.* Section 263A does not apply to the costs of property produced by a taxpayer to which the taxpayer properly applies the de minimis rule under § 1.263(a)–2(d)(4). However, the cost of property to which a taxpayer properly applies the de minimis rule under § 1.263(a)–2(d)(4) may be required to be capitalized to other property as a cost incurred by reason of the production of the other property that is subject to section 263A.

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–4466 Filed 3–7–08; 8:45 am]

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Monday, March 10, 2008

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 2571/P.L. 110–193

To make technical corrections to the Federal Insecticide, Fungicide, and Rodenticide Act. (Mar. 6, 2008; 122 Stat. 649)

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1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[9] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[9] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[11] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[10] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
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660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
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Subscription (mailed as issued)		406.00	2008
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Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.

[11] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.