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9:00 a.m.–Noon

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741-6008



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

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of a reduction in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective March 26, 2008. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452-3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263-4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

On the dates listed below, the Board approved requests by eight Reserve Banks to reduce by 25 basis points the primary credit rate in effect at those Federal Reserve Banks, thereby decreasing from 3.50 percent to 3.25 percent the rate that each of those Reserve Banks charged for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each of those Reserve Banks charged for extensions of secondary credit automatically decreased from 4.00 percent to 3.75 percent under the secondary credit rate formula. The rate changes for primary and secondary credit were effective on the dates specified in the following tables.

Primary credit under 12 CFR 201.4(a)

Federal Reserve Bank	Rate	Effective
Boston	3.25	March 17, 2008.
New York	3.25	March 16, 2008.
Cleveland	3.25	March 17, 2008.
Richmond	3.25	March 17, 2008.
Chicago	3.25	March 17, 2008.
Minneapolis	3.25	March 17, 2008.
Kansas City	3.25	March 17, 2008.
San Francisco ...	3.25	March 17, 2008.

Secondary credit under 12 CFR 201.4(b)

Federal Reserve Bank	Rate	Effective
Boston	3.75	March 17, 2008.
New York	3.75	March 16, 2008.
Cleveland	3.75	March 17, 2008.
Richmond	3.75	March 17, 2008.
Chicago	3.75	March 17, 2008.
Minneapolis	3.75	March 17, 2008.
Kansas City	3.75	March 17, 2008.
San Francisco ...	3.75	March 17, 2008.

The Board's action narrowed the spread between the primary credit rate and the Federal Open Market Committee's target federal funds rate to 25 basis points. As indicated in the Board's press release announcing this action, the changes to the primary credit discount window facility were intended to bolster market liquidity and promote orderly market functioning. In addition, the press release stated that the Board had approved an increase in the maximum maturity of primary credit loans to 90 days from 30 days.

Subsequently, the Board approved requests by each of the twelve Federal Reserve Banks to decrease the primary credit rate in effect at each of the

Reserve Banks to 2.50 percent. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically decreased to 3.00 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The decrease in the primary credit rate was associated with a similar decrease in the target for the federal funds rate (from 3.00 percent to 2.25 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions noted that:

Recent information indicates that the outlook for economic activity has weakened further. Growth in consumer spending has slowed and labor markets have softened. Financial markets remain under considerable stress, and the tightening of credit conditions and the deepening of the housing contraction are likely to weigh on economic growth over the next few quarters.

Inflation has been elevated, and some indicators of inflation expectations have risen. The Committee expects inflation to moderate in coming quarters, reflecting a projected leveling-out of energy and other commodity prices and an easing of pressures on resource utilization. Still, uncertainty about the inflation outlook has increased. It will be necessary to continue to monitor inflation developments carefully.

Today's policy action, combined with those taken earlier, including measures to foster market liquidity, should help to promote moderate growth over time and to mitigate the risks to economic activity. However, downside risks to growth remain. The Committee will act in a timely manner as needed to promote sustainable economic growth and price stability.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying

implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.¹

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	2.50	March 18, 2008.
New York	2.50	March 18, 2008.
Philadelphia	2.50	March 20, 2008.
Cleveland	2.50	March 18, 2008.
Richmond	2.50	March 19, 2008.
Atlanta	2.50	March 19, 2008.
Chicago	2.50	March 18, 2008.
St. Louis	2.50	March 19, 2008.
Minneapolis	2.50	March 19, 2008.
Kansas City	2.50	March 18, 2008.
Dallas	2.50	March 18, 2008.
San Francisco ...	2.50	March 18, 2008.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	3.00	March 18, 2008.
New York	3.00	March 18, 2008.
Philadelphia	3.00	March 20, 2008.

¹ The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

Federal Reserve Bank	Rate	Effective
Cleveland	3.00	March 18, 2008.
Richmond	3.00	March 19, 2008.
Atlanta	3.00	March 19, 2008.
Chicago	3.00	March 18, 2008.
St. Louis	3.00	March 19, 2008.
Minneapolis	3.00	March 19, 2008.
Kansas City	3.00	March 18, 2008.
Dallas	3.00	March 18, 2008.
San Francisco ...	3.00	March 18, 2008.

* * * * *
 By order of the Board of Governors of the Federal Reserve System, March 21, 2008.
Robert deV. Frierson,
Deputy Secretary of the Board.
 [FR Doc. E8–6107 Filed 3–25–08; 8:45 am]
BILLING CODE 6210–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0340; Directorate Identifier 2008–CE–020–AD; Amendment 39–15440; AD 2008–06–28]

RIN 2120–AA64

Airworthiness Directives; Avidyne Corporation Primary Flight Displays (Part Numbers 700–00006–000, –001, –002, –003, and –100)

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Avidyne Corporation (Avidyne) Primary Flight Displays (PFDs) (Part Numbers (P/Ns) 700–00006–000, –001, –002, –003, and –100) that are installed on airplanes. This AD requires a check of the maintenance records and inspection of the PFD (if necessary) to determine if an affected serial number PFD is installed. If an affected serial number PFD is installed, this AD requires you to incorporate information that limits operation when certain conditions for the PFD or backup instruments exist. This AD results from several field reports of PFDs displaying incorrect altitude and airspeed information. We are issuing this AD to prevent certain conditions from existing when PFDs display incorrect attitude, altitude, and airspeed information. This could result in airspeed/altitude mismanagement or spatial disorientation of the pilot with consequent loss of airplane control, inadequate traffic separation, or controlled flight into terrain.

DATES: This AD becomes effective on April 10, 2008.

We must receive any comments on this AD by May 27, 2008.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Avidyne Corporation, 55 Old Bedford Road, Lincoln, MA 01773; telephone: (781) 402–7400; fax: (781) 402–7599.

To view the comments to this AD, go to <http://www.regulations.gov>. The docket number is FAA–2008–0340; Directorate Identifier 2008–CE–020–AD.

FOR FURTHER INFORMATION CONTACT: Solomon Hecht, Aerospace Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803; telephone: (781) 238–7159; fax: (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

We received several field reports of PFDs displaying incorrect altitude and airspeed information. These occurrences included incorrect display of information at system startup, including one or more of the following:

- Altitude significantly in error when compared to field elevation with local barometric correction setting entered on PFD.

- Altitude significantly in error when compared to backup altimeter with identical barometric correction settings.

- Non-zero airspeed (inconsistent with high winds or propwash from a nearby airplane) indicated at system startup.

- Altitude or airspeed indications that vary noticeably after startup under static conditions.

- Erroneous airspeed indications in combination with erroneous attitude indications.

- A steady or intermittent “red X” in place of the airspeed indicator, altimeter, vertical speed indicator, or attitude indicator.

The conditions described above occur because of a manufacturing process

defect on a certain batch of PFD serial numbers during incorporation of a design improvement on the air data unit assembly. The root cause of this manufacturing process defect is still being analyzed.

This condition, if not corrected, could result in airspeed/altitude mismanagement or spatial disorientation of the pilot and consequent loss of airplane control, inadequate traffic separation, or controlled flight into terrain.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on type design airplanes that incorporate one of the affected PFDs. This AD requires a check of the maintenance records and inspection of the PFD (if necessary) to determine if an affected serial number PFD is installed. If an affected serial number PFD is installed, this AD requires you to incorporate information that limits operation when certain conditions for the PFD or backup instruments exist.

This is considered interim action. Avidyne is working on a process to rework and/or modify the affected PFD units. The FAA will consider taking additional rulemaking action to supersede this AD and terminate the above limitations when Avidyne completes the process development, and the FAA approves it as addressing the unsafe condition.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because PFDs that display incorrect attitude, altitude, and airspeed information could result in airspeed/altitude mismanagement or spatial disorientation of the pilot with consequent loss of airplane control, inadequate traffic separation, or controlled flight into terrain. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We

invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number "FAA-2008-0340; Directorate Identifier 2008-CE-020-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2008-06-28 Avidyne Corporation:

Amendment 39-15440; Docket No. FAA-2008-0340; Directorate Identifier 2008-CE-020-AD.

Effective Date

(a) This AD becomes effective on April 10, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Avidyne Corporation (Avidyne) Primary Flight Displays (PFDs) (Part Numbers (P/Ns) 700-00006-000, 700-00006-001, 700-00006-002, 700-00006-003, and 700-00006-100) that are installed on, but not limited to the following airplanes that are certificated in any category:

- (1) Adam Aircraft Model A500;
- (2) Cessna Aircraft Company Model 441 (STEC Alliant Supplemental Type Certificate (STC) No. SA09547AC-D incorporated);
- (3) Cessna Aircraft Company Models LC42-550FG and LC41-550FG (Columbia Aircraft Manufacturing and The Lancair Company previously held the type certificate for these airplanes);
- (4) Cirrus Design Corporation Models SR20 and SR22;

(5) Diamond Aircraft Industries GmbH Model DA 40;
 (6) Hawker Beechcraft Corporation Model E90 (STEC Alliant STC No. SA09545AC-D incorporated);
 (7) Hawker Beechcraft Corporation Model 200 series (STEC Alliant STC No. SA09543AC-D incorporated); and
 (8) Piper Aircraft, Inc. Models PA-28-161, PA-28-181, PA-28R-201, PA-32R-301 (HP),

PA-32R-301T, PA-32-301FT, PA-32-301XTC, PA-34-220T, PA-44-180, PA-46-350P, PA-46R-350T, and PA-46-500TP.

Unsafe Condition

(d) This AD is the result of several field reports of PFDs displaying incorrect altitude and airspeed information. We are issuing this AD to prevent certain conditions from existing when PFDs display incorrect

attitude, altitude, and airspeed information. This could result in airspeed/altitude mismanagement or spatial disorientation of the pilot with consequent loss of airplane control, inadequate traffic separation, or controlled flight into terrain.

Compliance

(e) To address this problem, you must do the following, unless already done:

TABLE 1.—ACTIONS, COMPLIANCE, AND PROCEDURES

Actions	Compliance	Procedures
<p>(1) Do a logbook check of maintenance records to determine if any PFD (P/Ns 700-00006-000, 700-00006-001, 700-00006-002, 700-00006-003, or 700-00006-100) with any affected serial number listed in TABLE 2—Serial Numbers of Affected PFDs is installed.</p> <p>(i) If, as a result of this check, you find any PFD installed with an affected serial number, do the action required by paragraph (e)(3)(i) or (e)(3)(ii) of this AD.</p> <p>(ii) If, as a result of this check, you cannot positively identify the serial number of the PFD, do the inspection required in paragraph (e)(2) of this AD.</p> <p>(iii) If, as a result of this check, you positively identify that the PFD installed does not have a serial number affected by this AD, then no further action is required.</p>	<p>Within 15 days after April 10, 2008 (the effective date of this AD).</p>	<p>The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the logbook check. Make an entry into the aircraft logbook showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).</p>
<p>(2) If you find, as a result of the check required by paragraph (e)(1) of this AD you cannot positively identify the serial number of the PFD, inspect any PFD (P/Ns 700-00006-000, 700-00006-001, 700-00006-002, 700-00006-003, or 700-00006-100) for any affected serial number listed in TABLE 2—Serial Numbers of Affected PFDs. You may do the requirement of paragraph (e)(3) of this AD instead of this inspection.</p>	<p>Within 15 days after April 10, 2008 (the effective date of this AD).</p>	<p>Not Applicable.</p>
<p>(3) If you find, as a result of the check required by paragraph (e)(1) of this AD or the inspection required by paragraph (e)(2) of this AD, any PFD installed with an affected serial number, do whichever of the following applies:</p> <p>(i) For airplanes with an airplane flight manual (AFM), pilots operating handbook (POH), or airplane flight manual supplement (AFMS), incorporate the language in the Appendix of this AD into the Limitations section.</p> <p>(ii) For airplanes without an AFM, POH, or AFMS, do the following:</p> <p>(A) Incorporate the language in the Appendix of this AD into your aircraft records; and</p> <p>(B) fabricate a placard (using at least 1/8-inch letters) with the following words and install the placard on the instrument panel within the pilot's clear view: "AD 2008-06-28 CONTAINS LIMITATIONS REGARDING AVIDYNE PRIMARY FLIGHT DISPLAYS (PFD) AND REQUIRED INCORPORATION OF THESE LIMITATIONS INTO THE AIRCRAFT RECORDS. YOU MUST FOLLOW THESE LIMITATIONS."</p>	<p>Within 15 days after April 10, 2008 (the effective date of this AD).</p>	<p>The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the AFM, POH, AFMS, or maintenance records as required in paragraph (e)(3)(i) or (e)(3)(ii)(A) of this AD and/or fabricate the placard required in paragraph (e)(3)(ii)(B) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).</p>

TABLE 1.—ACTIONS, COMPLIANCE, AND PROCEDURES—Continued

Actions	Compliance	Procedures
(4) Do not install any PFD (P/Ns 700–00006–000, 700–00006–001, 700–00006–002, 700–00006–003, or 700–00006–100) with any affected serial number listed in TABLE 2—Serial Numbers of Affected PFDs.	As of the effective date of this AD	Not Applicable.

Note 1: If you have an AFM, POH, or AFMS, you may fabricate and install a placard as described in paragraph (e)(3)(ii) of this AD in addition to, but not instead of, the

Limitations section requirement of paragraph (e)(3)(i) of this AD.

Note 2: Avidyne Service Alert No. SA–08–001, dated February 12, 2008, pertains to the

subject matter of this AD. The service information cautions that all pilots should be vigilant in conducting proper preflight and in-flight checks of instrument accuracy.

TABLE 2.—SERIAL NUMBERS OF AFFECTED PFDS

[AD 2008–06–28]

D1023, D1031, D1037, D1069, D1075, D1080, D1084, D1090, D1101, D1102, D1106, D1112, D1115, D1136, D1138, D1141, D1144, D1158, D1170, D1172, D1174, D1178, D1188, D1197, D1199, D1212, D1234, D1240, D1249, D1253, D1254, D1256, D1259, D1260, D1262, D1270, D1272, D1277, D1283, D1288, D1313, D1319, D1327, D1351, D1364, D1380, D1387, D1391, D1396, D1405, D1412, D1428, D1433, D1434, D1435, F0006, F0011, F0021, F0030, F0031, F0032, F0035, 20002067, 20003147, 20003296, 20003316, 20004297, 20005316, 20005487, 20008167, 20008227, 20008255, 20009297, 20009476, 20010177, 20010255, 20011396, 20011456, 20012337, 20012506, 20013406, 20014027, 20014227, 20015357, 20017286, 20018317, 20018425, 20018486, 20019067, 20019297, 20020297, 20021067, 20021197, 20022177, 20022207, 20022217, 20022286, 20022287, 20022296, 20023197, 20023377, 20024196, 20024217, 20024297, 20024397, 20024407, 20024425, 20025067, 20025177, 20025217, 20025317, 20026067, 20026197, 20026207, 20026265, 20026377, 20026407, 20026506, 20027177, 20027226, 20027317, 20027377, 20028177, 20028337, 20029177, 20029197, 20029246, 20029265, 20029506, 0030197, 20030237, 20031207, 20031217, 20031406, 20031407, 20031516, 20032067, 20032265, 20032337, 20032516, 20033337, 20034207, 20034327, 20035177, 20036197, 20036237, 20036397, 20037265, 20037285, 20038127, 20038197, 20038337, 20039177, 20040127, 20040177, 20040197, 20040265, 20040317, 20041177, 20042197, 20042265, 20042317, 20042337, 20043197, 20043215, 20043237, 20043247, 20044226, 20044237, 20044285, 20045215, 20045265, 20045437, 20046215, 20047127, 20047147, 20047197, 20048197, 20048215, 20048247, 20049147, 20049357, 20050147, 20050287, 20050346, 20050434, 20051215, 20052215, 20053247, 20053257, 20053357, 20054247, 20054257, 20054357, 20055087, 20056247, 20056257, 20057237, 20057346, 20058346, 20061087, 20061247, 20062087, 20062247, 20063087, 20064087, 20064147, 20064226, 20064337, 20066147, 20067087, 20068147, 20068337, 20069087, 20071237, 20072087, 20073087, 20073346, 20073506, 20074207, 20075087, 20075147, 20075207, 20076217, 20076257, 20077087, 20077506, 20078087, 20078217, 20078257, 20078346, 20078496, 20084257, 20085396, 20087257, 20089257, 20089346, 20090346, 20092297, 20093247, 20094107, 20094416, 20097137, 20098037, 20099107, 20099346, 20099416, 20101416, 20102417, 20103396, 20104246, 20106224, 20111224, 20112224, 20114416, 20115346, 20116346, 20118416, 20123416, 20124456, 20126416, 20129346, 20135337, 20139336, 20140336, 20142037, 20142296, 20146037, 20147336, 20153037, 20158097, 20161097, 20164097, 20165097, 20166097, 20170097, 20170175, 20172175, 20177175, 20202257, 20204175, 20209246, 20214175, 20216265, 20217175, 20224175, 20224265, 20229265, 20232175, 20233175, 20236175, 20236265, 20241175, 20243265, 20265355, 20272355, 20273355, 20278355, 20281355, 20302384, 20308384, 20314384, 20317384, 20320305, 20321376, 20330376, 20330384, 20343384, 20347305, 20348305, 20350305, 20356305, 20359305, 20378475, 20380225, 20381225, 20382475, 20388225, 20402174, 20403174, 20438345, 20440345, 20447425, 20452315, 20458315, 20462315, 20467315, 20540094, 20550094, 20576445, 20580445, 20581445, 20582525, 20584525, 20591525, 20595065, 20599065, 20605065, 20615116, 20618065, 20638116, 20656284, 20732074, 20735176, 20739176, 20755493, 20814015, 20815015, 20974365, 20978365, 20978434, 20986365, 20990434, 20998365, 21002365, 21056395, 21060395, 21063184, 21063395, 21067184, 21070184, 21075395, 21191045, 21192045, 21219045, 21294414, 21311414, 21311414, 21325414, 21330414, 21334414, 21340414, 21491056, 21493056, 21596354, 21603435, 21604435, 21606435, 21608435, 21610435, 21614435, 21646086, 21668086, 21812514, 21823514, 21826514, 21836304, 21839304, 21852304, 22310186, 22378026, 22380026, 22398294, 22401294, 22405085, 22412385, 22418026, 22418385, 22419026, 22470524, 22471524, 22472524, 22479524, 22483524, 22486524, 22523204, 22525264, 22531204, 22559135, 22568135, 22572135, 22578135, 22579135, 22586135, 22602135, 22603135, 22608135, 22642493, 22647493, 22682076, 22908334, 22921334, 22961354, 23166495, 23169495, 23173495, 23175495, 23182495, 23371455, 23378455, 23443264, 23445264, 23448264, 23581244, 23602244, 23737136, 23738136, 24021335, 24029335, 24231144, 24238144, 24248144, 24381324, 24478515, 24735144, 24746144, 24750144, 24772085, 24773085, 24865155, 24867155, 24870155, 24990084, 24991084, 24993084, 24996084, 25023034, 25027034, 25522465, 25525465, 25530465, 25532465, 25538465, 25600465, 25618106, 26287114, 26528095, 26547095, 26553095, 26569464, 26571095, 26572095, 26584095, 26588464, 26592464, 27865034, 28478495, 28519495, 29019044, 29023044, 29029044, 29031044, 29032044, 29512216, 29514216, and 29522216.
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Alternative Methods of Compliance (AMOCs)

(f) The Manager, Boston Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Solomon Hecht, Aerospace Engineer, Boston ACO, 12 New England Executive Park, Burlington, MA 01803; telephone: (781) 238–7159; fax: (781) 238–7170. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate

principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Additional Information

(g) For the service alert referenced in this AD, contact Avidyne Corporation, 55 Old Bedford Road, Lincoln, MA 01773; telephone: (781) 402–7400; fax: (781) 402–7599.

Appendix to AD 2008–06–28 Limitations Regarding Avidyne Primary Flight Displays (PFDs)

Before conducting flight operations, pilots must review and be familiar with the Crosscheck Monitor section of the Avidyne Primary Flight Display Pilot’s Guide and all limitations contained in the aircraft operating handbook.

As a normal practice, all pilots should be vigilant in conducting proper preflight and

in-flight checks of instrument accuracy, including:

- Preflight check of the accuracy of both the primary and backup altimeter against known airfield elevation and against each other.
 - Verification of airspeed indications consistent with prevailing conditions at startup, during taxi, and prior to takeoff.
 - "Airspeed alive" check and reasonable indications during takeoff roll.
 - Maintenance of current altimeter setting in both primary and backup altimeters.
 - Cross-check of primary and backup altimeters at each change of altimeter setting and prior to entering instrument meteorological conditions (IMC).
 - Cross-check of primary and backup altimeters and validation against other available data, such as glideslope intercept altitude, prior to conducting any instrument approach.
 - Periodic cross-checks of primary and backup airspeed indicators, preferably in combination with altimeter cross-checks.
- For flight operations under instrument flight rules (IFR) or in conditions in which visual reference to the horizon cannot be reliably maintained (that is IMC, night operations, flight operations over water, in haze or smoke) and the pilot has reasons to suspect that any source (PFD or back-up instruments) of attitude, airspeed, or altitude is not functioning properly, flight under IFR or in these conditions must not be initiated (when condition is determined on the ground) and further flight under IFR or in these conditions is prohibited until equipment is serviced and functioning properly.

Operation of aircraft not equipped with operating backup (or standby) attitude, altimeter, and airspeed indicators that are located where they are readily visible to the pilot is prohibited.

Pilots must frequently scan and crosscheck flight instruments to make sure the information depicted on the PFD correlates and agrees with the information depicted on the backup instruments.

Issued in Kansas City, Missouri, on March 13, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-5701 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21242; Directorate Identifier 2005-NE-09-AD; Amendment 39-15442; AD 2008-07-01]

RIN 2120-AA64

Airworthiness Directives; Turbomeca Arriel 1B, 1D, 1D1, and 1S1 Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for certain Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines. That AD currently requires initial and repetitive position checks of the gas generator 2nd stage turbine blades on all Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines. That AD also currently requires initial and repetitive replacements of 2nd stage turbines on 1B, 1D, and 1D1 engines only. This AD requires adding a 3,000 hour life limit to Arriel 1B 2nd stage turbine blades. This AD results from reports of failures of second stage turbine blades. We are issuing this AD to prevent failures of the 2nd stage turbine blades, which could result in uncommanded in-flight engine shutdown, and subsequent forced autorotation landing or accident.

DATES: This AD becomes effective April 30, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 30, 2008. The Director of the Federal Register previously approved the incorporation by reference of Turbomeca Mandatory Alert Service Bulletins A292 72 0809, Update 1, dated October 4, 2005; and A292 72 0810, dated March 24, 2004; as of February 28, 2006 (71 FR 3754, January 24, 2006).

ADDRESSES: You can get the service information identified in this AD from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15.

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

FOR FURTHER INFORMATION CONTACT:

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New

England Executive Park, Burlington, MA 01803; e-mail: james.lawrence@faa.gov; telephone (781) 238-7176, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2006-02-08R1, Amendment 39-14721 (71 FR 46390, August 14, 2006), with a proposed AD. The proposed AD applies to certain Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines. We published the proposed AD in the **Federal Register** on March 9, 2007 (72 FR 10622). That action proposed to require:

- Initial and repetitive position checks of the 2nd stage turbine blades on Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines.
- Replacement of 2nd stage turbines on 1B and 1D1 engines only.
- Initially replacing 2nd stage turbines in Arriel 1B, 1D, and 1D1 turboshaft engines.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Addition of an Optional Terminating Action

We have added to the AD, an option to terminate the repetitive position check requirements by installing a new turbine, part number (P/N) 0 292 25 039 0.

Correction of a Typographical Error in the Costs of Compliance

We corrected the number of turbine replacements in the Costs of Compliance from 587 to 571, and changed the total cost from \$3,905,240 to \$3,769,760.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 721 engines installed on helicopters of U.S. registry. We also estimate that it will take about 2 work-hours per engine to inspect all 721 engines and 40 work-hours per engine to replace about 571 2nd stage turbines on 1B and 1D1 engines, and that the average labor rate is \$80 per work-hour. Required parts would cost about \$3,200 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$3,769,760.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39-14721 (71 FR 46390, August 14, 2006) and by adding a new airworthiness directive, Amendment 39-15442, to read as follows:

2008-07-01 Turbomeca: Amendment 39-15442. Docket No. FAA-2005-21242; Directorate Identifier 2005-NE-09-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2008.

Affected ADs

(b) This AD supersedes AD 2006-02-08R1, Amendment 39-14721 (71 FR 46390, August 14, 2006).

Applicability

(c) This AD applies to Turbomeca Arriel 1B engines fitted with 2nd stage turbine modification TU 148, and Arriel 1D, 1D1, and 1S1 engines that do not incorporate TU 347. Arriel 1B engines are installed on, but not limited to, Eurocopter France AS-350B and AS-350A "Ecureuil" helicopters. Arriel 1D engines are installed on, but not limited to, Eurocopter France AS-350B1 "Ecureuil" helicopters. Arriel 1D1 engines are installed on, but not limited to, Eurocopter France AS-350B2 "Ecureuil" helicopters. Arriel 1S1 engines are installed on, but not limited to, Sikorsky Aircraft S-76A and S-76C helicopters.

Unsafe Condition

(d) This AD results from reports of failures of second stage blades. We are issuing this AD to prevent failures of the 2nd stage turbine blades, which could result in uncommanded in-flight engine shutdown, and subsequent forced autorotation landing or accident.

Compliance

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

Initial Relative Position Check of 2nd Stage Turbine Blades

(f) Do an initial relative position check of the 2nd stage turbine blades using the Turbomeca mandatory alert service bulletins (ASBs) specified in the following Table 1. Do the check before reaching any of the intervals specified in Table 1 or within 50 hours time-in-service after the effective date of this AD, whichever occurs later.

TABLE 1.—INITIAL AND REPETITIVE RELATIVE POSITION CHECK INTERVALS OF 2ND STAGE TURBINE BLADE

Turbomeca engine model	Initial relative position check interval	Repetitive interval	Mandatory Alert Service Bulletin
Arriel 1B (modified per TU 148).	Within 1,200 hours time-since-new (TSN) or time-since-overhaul (TSO) or 3,500 cycles-since-new (CSN) or cycles-since-overhaul (CSO), whichever occurs earlier.	Within 200 hours time-in-service-since-last-relative-position-check (TSLRPC).	A292 72 0807, Update 1, dated October 26, 2006.
Arriel 1D1 and Arriel 1D.	Within 1,200 hours TSN or TSO or 3,500 CSN or CSO, whichever occurs earlier.	Within 150 hours TSLRPC	A292 72 0809, Update No. 1, dated October 4, 2005.
Arriel 1S1	Within 1,200 hours TSN or TSO or 3,500 CSN or CSO, whichever occurs earlier.	Within 150 hours TSLRPC	A292 72 0810, dated March 24, 2004.

Repetitive Relative Position Check of 2nd Stage Turbine Blades

(g) Recheck the relative position of 2nd stage turbine blades at the TSLRPC intervals specified in Table 1 of this AD, using the mandatory ASBs indicated.

Credit for Previous Relative Position Checks

(h) Relative position checks of 2nd stage turbine blades done using Turbomeca Service Bulletin A292 72 0263, Update 1, 2, 3, or 4, or A292 72 0807, dated March 24, 2004, comply with the initial requirements of paragraph (f) of this AD.

Initial Replacement of 2nd Stage Turbines on Arriel 1B, 1D, and 1D1 Engines

(i) Initially replace the 2nd stage turbine with a new or overhauled 2nd stage turbine as follows:

(1) Before accumulating 1,500 hours TSN or TSO on the module for Arriel 1D and 1D1 engines.

(2) Before accumulating 2,200 hours TSN or TSO on the module or 3,000 total hours TSN on the 2nd stage turbine blades, whichever occurs first, for Arriel 1B engines.

Repetitive Replacements of 2nd Stage Turbines on Arriel 1B, 1D, and 1D1 Engines

(j) Thereafter, replace the 2nd stage turbine with a new or overhauled 2nd stage turbine within every 1,500 hours TSN or TSO on the module for Arriel 1D and 1D1 engines, and within every 2,200 hours TSN or TSO on the module or 3,000 total hours TSN on the 2nd stage turbine blades, for Arriel 1B engines.

Criteria for Overhauled 2nd Stage Turbines

(k) Do the following to overhauled 2nd stage turbines, referenced in paragraphs (i) and (j) of this AD:

(1) You must install new blades in the 2nd stage turbines of overhauled Arriel 1D and 1D1 engines.

(2) You may install either overhauled blades with fewer than 3,000 total hours TSN or new blades in the 2nd stage turbines of overhauled Arriel 1B engines.

Relative Position Check Continuing Compliance Requirements

(l) All 2nd stage turbines, including those that are new or overhauled, must continue to comply with the actions specified in paragraphs (f), (g), and (j) of this AD.

Optional Terminating Action

(m) Installing a new turbine, P/N 0 292 25 039 0, reference TU 347, terminates the requirements to perform the repetitive actions specified in paragraphs (g) and (j) of this AD.

Alternative Methods of Compliance

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

Related Information

(o) The EASA airworthiness directive 2007-0018R1, dated August 14, 2007, also addresses the subject of this AD.

(p) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: james.lawrence@faa.gov; telephone (781) 238-7176, fax (781) 238-7199, for more information about this AD.

Material Incorporated by Reference

(q) You must use the service information specified in Table 2 of this AD to perform the actions required by this AD.

(1) The Director of the Federal Register approved the incorporation by reference of Turbomeca Mandatory Alert Service Bulletin A292 72 0807, Update 1, dated October 26, 2006, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Turbomeca Mandatory Alert Service Bulletins A292 72 0809, Update 1, dated October 4, 2005; and A292 72 0810, dated March 24, 2004; as of February 28, 2006 (71 FR 3754, January 24, 2006).

(3) Contact Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15 for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

TABLE 2.—INCORPORATION BY REFERENCE

Turbomeca Mandatory Alert Service Bulletin No.	Page	Update No.	Date
A292 72 0807, Total Pages: 18	ALL	1	October 26, 2006.
A292 72 0809, Total Pages: 18	ALL	1	October 4, 2005.
A292 72 0810, Total Pages: 14	ALL	Original	March 24, 2004.

Issued in Burlington, Massachusetts, on March 17, 2008.

Ann C. Mollica,

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

[FR Doc. E8-5819 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0056 Directorate Identifier 2007-CE-096-AD; Amendment 39-15446; AD 2008-07-05]

RIN 2120-AA64

Airworthiness Directives; APEX Aircraft Model CA 10B Airplanes

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

ACTION: Final rule.

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

A CAP 10B experienced an emergency landing after its front fuel tank collapsed and rendered inoperative the left rudder pedals which were blocked in neutral position. Investigation and the metallurgical examination revealed that the fuel tank straps had fractured as a result of fatigue. The tank support straps had logged around 7000 hours time-in-service (TIS).

DGAC France Airworthiness Directive (AD) F-2004-071 was issued to introduce a 4000 hour life-limit for the tank support straps and to require replacement of straps which had exceeded this life-limit. Since then, a front tank support has been found damaged during

an inspection before reaching 4000 hours TIS.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 30, 2008.

On April 30, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City,

Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 24, 2008 (73 FR 4121). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A CAP 10B experienced an emergency landing after its front fuel tank collapsed and rendered inoperative the left rudder pedals which were blocked in neutral position. Investigation and the metallurgical examination revealed that the fuel tank straps had fractured as a result of fatigue. The tank support straps had logged around 7000 hours time-in-service (TIS).

DGAC France Airworthiness Directive (AD) F-2004-071 was issued to introduce a 4000 hour life-limit for the tank support straps and to require replacement of straps which had exceeded this life-limit. Since then, a front tank support has been found damaged during an inspection before reaching 4000 hours TIS.

The present AD supersedes DGAC France AD F-2004-071, reduces to 2000 hours the life-limit for the tank support straps and requires replacement of straps which have exceeded the new life-limit.

These actions are intended to address the identified unsafe condition so as to prevent fatigue cracks from occurring in the tank support straps before the established safe life is reached.

The MCAI requires the life-limit of the front fuel tank strap be reduced from 4,000 hours TIS to 2,000 hours TIS and the replacement of front fuel tank straps that have exceeded the new life-limit.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information

provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 31 products of U.S. registry. We also estimate that it will take about 19 work-hours per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$65 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$49,135 or \$1,585 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-07-05 APEX Aircraft: Amendment 39-15446; Docket No. FAA-2008-0056; Directorate Identifier 2007-CE-096-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CAP 10 B airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A CAP 10B experienced an emergency landing after its front fuel tank collapsed and rendered inoperative the left rudder pedals which were blocked in neutral position. Investigation and the metallurgical examination revealed that the fuel tank straps had fractured as a result of fatigue. The tank

support straps had logged around 7,000 hours time-in-service (TIS).

DGAC France Airworthiness Directive (AD) F-2004-071 was issued to introduce a 4,000 hour life-limit for the tank support straps and to require replacement of straps which had exceeded this life-limit.

Since then, a front tank support has been found damaged during an inspection before reaching 4,000 hours TIS.

The present AD supersedes DGAC France AD F-2004-071, reduces to 2,000 hours the life-limit for the tank support straps and requires replacement of straps which have exceeded the new life-limit.

These actions are intended to address the identified unsafe condition so as to prevent fatigue cracks from occurring in the tank support straps before the established safe life is reached.

The MCAI requires the life-limit of the front fuel tank strap be reduced from 4,000 hours TIS to 2,000 hours TIS and the replacement of front fuel tank straps that have exceeded the new life-limit.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) When you accumulate a total of 2,000 hours TIS on the strap or within the next 30 days after April 30, 2008 (the effective date of this AD), whichever occurs later, replace the front fuel tank support strap, part number (P/N) CAP 10-70-08-01, using the instructions in the maintenance manual.

(2) Repetitively thereafter in intervals not to exceed 2,000 hours TIS on the strap replace the front fuel tank support strap, P/N CAP 10-70-08-01, using the instructions in the maintenance manual.

(3) If you are unable to establish the accumulated hours TIS on the front fuel tank support strap, P/N CAP 10-70-08-01, you must use the total hours TIS accumulated on the airplane for the accumulated hours TIS on the strap.

(4) Within the next 30 days after the effective date of this AD update the airworthiness limitations section of your maintenance program to reflect the life limit change of P/N CAP 10-70-08-01 from 4,000 hours TIS to 2,000 hours TIS using APEX Aircraft Service Bulletin No. 040102 R1, Revision 1, dated September 18, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The FAA has established a more universal compliance time for all airplanes. This gives all owners/operators at least 30 days to comply with the AD.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816)

329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD No.: 2007-0285, dated November 13, 2007; and APEX Aircraft Service Bulletin No. 040102 R1, Revision 1, dated September 18, 2007, for related information.

Material Incorporated by Reference

(i) You must use APEX Aircraft Service Bulletin No. 040102 R1, Revision 1, dated September 18, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Apex Aircraft, Bureau de Navigabilité, 1, route de Troyes, 21121 DAROIS—France; telephone: +33 380 35 65 10; fax +33 380 35 65 15; e-mail: airworthiness@apex-aircraft.com; Internet: <http://www.apex-aircraft.com>.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on March 17, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-5955 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0055; Directorate Identifier 2007-CE-099-AD; Amendment 39-15447; AD 2008-07-06]

RIN 2120-AA64

Airworthiness Directives; Pacific Aerospace Corporation, Ltd. Models FU24-954 and FU24A-954 Airplanes

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

ACTION: Final rule.

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

This AD is prompted by reports of loosening rivets securing the threaded inserts in the ends of the aileron control pushrods P/N 08-24015-1. Aileron push-pull rods P/N 08-24015-1 have been installed on aircraft embodying PAC/FU/0340.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 30, 2008.

On April 30, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 24, 2008 (73 FR

4127). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This AD is prompted by reports of loosening rivets securing the threaded inserts in the ends of the aileron control pushrods P/N 08-24015-1. Aileron push-pull rods P/N 08-24015-1 have been installed on aircraft embodying PAC/FU/0340.

The MCAI requires an initial and repetitive inspection of the aileron and elevator control push-rods and requires corrective action as necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between this AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$100 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$360 or \$180 per product.

In addition, we estimate that any necessary follow-on actions would take about 5 work-hours and require parts costing \$100, for a cost of \$500 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-07-06 Pacific Aerospace Corporation, Ltd.: Amendment 39-15447; Docket No. FAA-2008-0055; Directorate Identifier 2007-CE-099-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to models FU24-954 and FU24A-954 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

This AD is prompted by reports of loosening rivets securing the threaded inserts in the ends of the aileron control pushrods P/N 08-24015-1. Aileron push-pull rods P/N 08-24015-1 have been installed on aircraft embodying PAC/FU/0340.

The MCAI requires an initial and repetitive inspection of the aileron and elevator control push-rods and requires corrective action as necessary.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 50 hours time-in-service (TIS) after April 30, 2008 (the effective date of this AD), inspect the pushrod ends on the aileron and elevator control pushrods part number (P/N) 08-24015-1 following Pacific Aerospace Limited Service Bulletin No. PACSB/FU/091, Issue 2, dated November 12, 2007. Repetitively inspect thereafter at intervals not to exceed 150 hours TIS.

(2) Before further flight after any inspection where any rivets are found on aileron and elevator control pushrods P/N 08-24015-1 that have detectable play between the pushrod and the insert or evidence of working rivets, replace the rivets following Pacific Aerospace Limited Service Bulletin No. PACSB/FU/091, Issue 2, dated November 12, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI Civil Aviation Authority of New Zealand (CAA), which is the aviation authority for New Zealand, DCA/FU24/177, dated November 28, 2007; and Pacific Aerospace Limited Service Bulletin No. PACSB/FU/091, Issue 2, dated November 12, 2007, for related information.

Material Incorporated by Reference

(i) You must use Pacific Aerospace Limited Service Bulletin No. PACSB/FU/091, Issue 2, dated November 12, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag, 3027 Hamilton, New Zealand; telephone: +64 7-843-6144; facsimile: +64 7-843-6134.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on March 17, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-5957 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2008-0057 Directorate Identifier 2007-CE-102-AD; Amendment 39-15445; AD 2008-07-04]

RIN 2120-AA64

Airworthiness Directives; APEX Aircraft Model CAP 10 B Airplanes

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

ACTION: Final rule.

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

A case of loose bond (ungluing) of one mounting wooden block of the control stick base cover, found during the cover reinstallation, was reported to the Type Certificate Holder (TCH) and led to the issuance of the "recommended" Service Bulletin (SB) No. 031004 in February 2004. Since that date, other similar occurrences have been reported. This SB in its revision 1, has therefore been reclassified "mandatory" by the TCH.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 30, 2008.

On April 30, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer,

FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 24, 2008 (73 FR 4123). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A case of loose bond (ungluing) of one mounting wooden block of the control stick base cover, found during the cover reinstallation, was reported to the Type Certificate Holder (TCH) and led to the issuance of the "recommended" Service Bulletin (SB) No.031004 in February 2004. Since that date, other similar occurrences have been reported. This SB in its revision 1, has therefore been reclassified "mandatory" by the TCH.

This Airworthiness Directive (AD) mandates inspection of the mounting blocks of the control stick base cover for loose bonds and repair, as necessary.

These actions are intended to address the identified unsafe condition so as to prevent separation of the mounting blocks from the wing spar which could result in restricted movement of the ailerons and elevators with possible partial or complete loss of controls.

The MCAI requires an inspection of the four mounting wooden blocks of the control stick base cover. You are to take corrective action by repairing any loose blocks where inspection indicates necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 52 products of U.S. registry. We also estimate that it will take about .5 work-hour per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$135 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$9,100 or \$175 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-07-04 APEX Aircraft: Amendment 39-15445; Docket No. FAA-2008-0057; Directorate Identifier 2007-CE-102-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following CAP 10 B airplanes that are certificated in any category:

- (i) serial numbers 300 through 310; and
- (ii) serial numbers 1 through 40 that have been retrofitted with carbon/wood wing reference 5702-0104048* (*with or without a variable letter or number at the reference end).

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A case of loose bond (ungluing) of one mounting wooden block of the control stick base cover, found during the cover reinstallation, was reported to the Type Certificate Holder (TCH) and led to the issuance of the "recommended" Service

Bulletin (SB) No. 031004 in February 2004. Since that date, other similar occurrences have been reported. This SB in its revision 1, has therefore been reclassified "mandatory" by the TCH.

This Airworthiness Directive (AD) mandates inspection of the mounting blocks of the control stick base cover for loose bonds and repair, as necessary.

These actions are intended to address the identified unsafe condition so as to prevent separation of the mounting blocks from the wing spar which could result in restricted movement of the ailerons and elevators with possible partial or complete loss of controls.

The MCAI requires an inspection of the four mounting wooden blocks of the control stick base cover. You are to take corrective action by repairing any loose blocks where inspection indicates necessary.

Actions and Compliance

(f) Unless already done, do the following actions within the next 6 months after April 30, 2008 (the effective date of this AD), following APEX Aircraft Service Bulletin No. 031004 R1, Revision 1, dated November 12, 2007:

(1) Inspect the four mounting wooden blocks of the control stick base cover for loose bonding (gluing); and

(2) If any wooden block is found to be loose, take corrective action.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD No.: 2007-0296, dated December 7, 2007; and APEX Aircraft Service Bulletin (SB) No. 031004 R1, Revision 1, dated November 12, 2007, for related information.

Material Incorporated by Reference

(i) You must use APEX Aircraft Service Bulletin (SB) No. 031004 R1, Revision 1, dated November 12, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Apex Aircraft, Bureau de Navigabilité, 1, route de Troyes, 21121 DAROIS—France; telephone: +33 380 35 65 10; fax +33 380 35 65 15; e-mail: airworthiness@apex-aircraft.com; Internet: <http://www.apex-aircraft.com>.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on March 17, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-5961 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2008-0136; Directorate Identifier 2007-CE-104-AD; Amendment 39-15449; AD 2008-07-08]

RIN 2120-AA64

Airworthiness Directives; Pacific Aerospace Limited Model 750XL Airplanes

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

ACTION: Final rule.

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

condition as 1/8-inch rivets installed in place of the correct 5/32-inch rivets that secure the horizontal tail surface load transfer angles to the rearmost fuselage frame at Station 384.62. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 30, 2008.

On April 30, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 5, 2008 (73 FR 6636). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI describes the unsafe condition as 1/8-inch rivets installed in place of the correct 5/32-inch rivets that secure the horizontal tail surface load transfer angles to the rearmost fuselage frame at Station 384.62.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S.

operators and is enforceable. In making these changes, we do not intend to differ substantially from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 0.5 work-hour per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$280 or \$40 per product.

In addition, we estimate that any necessary follow-on actions would take about 2.0 work-hours and require parts costing \$10, for a cost of \$170 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-07-08 Pacific Aerospace Limited:
Amendment 39-15449; Docket No. FAA-2008-0136; Directorate Identifier 2007-CE-104-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to 750XL airplanes, serial numbers 101 through 108, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 51: Structures.

Reason

(e) The MCAI describes the unsafe condition as 1/8-inch rivets installed in place of the correct 5/32-inch rivets that secure the horizontal tail surface load transfer angles to the rearmost fuselage frame at Station 384.62. The MCAI requires you to inspect for the correct size rivets and if the wrong size rivets are installed, replace the rivets with the correct size rivets.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 100 hours time-in-service (TIS) after April 30, 2008 (the effective date of this AD), inspect to ensure that 1/8-inch rivets are not installed in place of the correct 5/32-inch rivets that secure the horizontal tail surface load transfer angles to the rearmost fuselage frame at Station 384.62 following Pacific Aerospace Corporation Limited Mandatory Service Bulletin No. PACSB/XL/010, dated: July 23, 2004.

(2) Before further flight, if you find undersized rivets are installed as a result of the inspection required by paragraph (f)(1) of this AD, replace the undersized rivets with the correct 5/32-inch rivets following Pacific Aerospace Corporation Limited Mandatory Service Bulletin No. PACSB/XL/010, dated: July 23, 2004.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) **Alternative Methods of Compliance (AMOCs):** The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) **Airworthy Product:** For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) **Reporting Requirements:** For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI Civil Aviation Authority of New Zealand (NZ) AD DCA/750XL/4A,

effective date: January 31, 2008, amending NZ AD DCA/750XL/4, effective date: September 30, 2004; and Pacific Aerospace Corporation Limited Mandatory Service Bulletin No. PACSB/XL/010, dated: July 23, 2004, for related information.

Material Incorporated by Reference

(i) You must use Pacific Aerospace Corporation Limited Mandatory Service Bulletin No. PACSB/XL/010, dated: July 23, 2004, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag, 3027 Hamilton, New Zealand; telephone: +64 7-843-6144; fax: +64 7-843-6134.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on March 19, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-5963 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0345; Directorate Identifier 2008-CE-017-AD; Amendment 39-15443; AD 2008-07-02]

RIN 2120-AA64

Airworthiness Directives; MORAVAN a.s. Model Z-143L Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

Installation of G-load monitoring units on some Z 43 series aeroplanes has revealed that certain aeroplanes, during aerobatic

manoeuvres, exceeded the limit loads initially defined for the certification.

As a consequence, to restore the safety margins on aeroplanes operated in Utility ("U") category, this AD mandates a modification of the Airplane Flight Manual (AFM) so as to change and limit the permissible manoeuvres in "U" category flights.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective March 31, 2008.

On March 31, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by April 25, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No: 2008-0046, dated February 28, 2008 (referred to after this as "the MCAI"), to correct

an unsafe condition for the specified products. The MCAI states:

Installation of G-load monitoring units on some Z 43 series aeroplanes has revealed that certain aeroplanes, during aerobatic manoeuvres, exceeded the limit loads initially defined for the certification.

As a consequence, to restore the safety margins on aeroplanes operated in Utility ("U") category, this AD mandates a modification of the Airplane Flight Manual (AFM) so as to change and limit the permissible manoeuvres in "U" category flights.

This AD requires you to modify the Limitations section of the airplane flight manual (AFM) by incorporating AFM, revision 11, dated November 24, 2006.

You may obtain further information by examining the MCAI in the AD.

Relevant Service Information

Moravan Aviation s.r.o. has issued Mandatory Service Bulletin Z143L/29a, dated February 15, 2007, which incorporates the AFM revision 11, dated November 24, 2006, which limits certain maneuvers in the Utility Category. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These

requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule, because there is a risk of structural damage in the wing area if the currently allowed maneuvers in the Utility Category are continued. It is imperative that the required limitations take effect immediately so the operator is aware of these changes and does not exceed the new limits needed in order to maintain the integrity of the structure. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0345; Directorate Identifier 2008-CE-017-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-07-02 MORAVAN a.s.: Amendment 39-15443; Docket No. FAA-2008-0345; Directorate Identifier 2008-CE-017-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 31, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model Z-143L airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 5: Time Limits.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Installation of G-load monitoring units on some Z 43 series aeroplanes has revealed that certain aeroplanes, during aerobatic manoeuvres, exceeded the limit loads initially defined for the certification.

As a consequence, to restore the safety margins on aeroplanes operated in Utility ("U") category, this AD mandates a modification of the Airplane Flight Manual (AFM) so as to change and limit the permissible manoeuvres in "U" category flights.

This AD requires you to modify the Limitations section of the airplane flight manual (AFM) by incorporating AFM, revision 11, dated November 24, 2006.

Actions and Compliance

(f) Unless already done, within 10 days after March 31, 2008 (the effective date of this AD) modify the Limitations section of the AFM following Moravan Aviation s.r.o. Mandatory Service Bulletin Z143L/29a, dated February 15, 2007, by incorporating AFM, revision 11, dated November 24, 2006. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do this action. Make an entry into the aircraft logbook showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the

provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to European Aviation Safety Agency (EASA) AD No.: 2008-0046, dated February 28, 2008; and Moravan Aviation s.r.o. Mandatory Service Bulletin Z143L/29a, dated February 15, 2007, for related information.

Material Incorporated by Reference

(i) You must use Moravan Aviation s.r.o. Mandatory Service Bulletin Z143L/29a, dated February 15, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Moravan Aviation s.r.o., ZLIN Service, 765 81 Otrokovice, Czech Republic.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on March 17, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-6037 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0017; Directorate Identifier 2007-NM-268-AD; Amendment 39-15444; AD 2008-07-03]

RIN 2120-AA64

Airworthiness Directives; Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of

another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on [the] ground, the FAA has published Special Federal Aviation Regulation No. 88 (SFAR-88) in June 2001 [which] required [conducting] a design review against explosion risks.

* * * * *

The potential of ignition sources (in certain fuel pumps, fuel switches, refuel shutoff valves, and optical sensors/mechanical switches), in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 30, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 30, 2008.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1112; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 14, 2008 (73 FR 2192). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on [the] ground, the FAA has published Special Federal Aviation Regulation No. 88 (SFAR-88) in June 2001 [which] required [conducting] a design review against explosion risks.

In their Letters referenced 04/00/02/07/01-L296, dated March 4, 2002 and 04/00/02/07/03-L024, dated February 3, 2003, the JAA (Joint Aviation Authorities) recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3402 kg) or more, which have received their certification since January 1, 1958, are required to conduct a design review against explosion risks.

As a consequence of the design review mentioned above, this Airworthiness Directive (AD) requires a modification to install extra protection of wiring installed in fuel tank conduits.

The modification includes an inspection for any damage of the wiring to the fuel pumps, fuel level switches, the refuel shutoff valves, and optical sensors/mechanical switches, and if any damage is found, contacting Saab for repair instructions and repair. These fuel pumps, fuel switches, refuel shutoff valves, and optical sensors/mechanical switches are potential ignition sources. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 218 products of U.S. registry. We also estimate that it will take about 80 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for

these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$1,395,200, or \$6,400 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for

the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-07-03 Saab Aircraft AB: Amendment 39-15444; Docket No. FAA-2008-0017; Directorate Identifier 2007-NM-268-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on [the] ground, the FAA has published Special Federal Aviation Regulation No. 88 (SFAR-88) in June 2001 [which] required [conducting] a design review against explosion risks.

In their Letters referenced 04/00/02/07/01-L296, dated March 4, 2002 and 04/00/02/07/03-L024, dated February 3, 2003, the JAA (Joint Aviation Authorities) recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3402 kg) or more, which have received their certification since January 1, 1958, are required to conduct a design review against explosion risks.

As a consequence of the design review mentioned above, this Airworthiness Directive (AD) requires a modification to

install extra protection of wiring installed in fuel tank conduits.

The potential of ignition sources (in certain fuel pumps, fuel switches, refuel shutoff valves, and optical sensors/mechanical switches), in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The modification includes an inspection for any damage of the wiring to the fuel pumps, fuel level switches, the refuel shutoff valves, and optical sensors/mechanical switches, and if any damage is found, contacting Saab for repair instructions and repair.

Actions and Compliance

(f) Within 72 months after the effective date of this AD, unless already done, perform Modification No. 3164 (right-hand wing) and Modification No. 3165 (left-hand wing) in accordance with Saab Service Bulletin 340-28-026, dated July 5, 2007. The modifications include the following actions.

(1) Removal of the fuel pumps 5QM and 6QM, the fuel switches 31EB, 32EB, 9QA, 10QA, 11QA, and 12QA, the refuel shutoff valves 15QA and 16QA, and the optical sensors/mechanical switches 13QA and 14QA.

(2) Inspection of the wiring to the fuel pumps, fuel level switches, the refuel shutoff valves, and optical sensors/mechanical switches, and if any damage is found, contact Saab for repair instructions and repair before further flight.

(3) Twisting of the fuel pump wiring, fuel level switches wiring, refuel shutoff valves wiring, and optical sensors/mechanical switches wiring.

(4) Installation of a shrinkable tube to the fuel pumps wiring, fuel level switches wiring, refuel shutoff valves wiring and optical sensors/mechanical switches wiring.

(5) Installation of fuel pumps, the fuel level switches, the refuel shutoff valves, and the optical sensors/mechanical switches.

(6) Operational and functional test of the fuel measuring/indicating system.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI does not specify corrective action for the inspection specified in paragraph (f)(2) of this AD. This AD requires contacting Saab for repair instructions and repairing before further flight.

(2) The MCAI does not include actions for optical sensors/mechanical switches 13QA and 14QA; however, paragraph (f) of this AD includes modification of those optical sensors/mechanical switches.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1112; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007-0248, dated September 7, 2007, and Saab Service Bulletin 340-28-026, dated July 5, 2007, for related information.

Material Incorporated by Reference

(i) You must use Saab Service Bulletin 340-28-026, dated July 5, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on March 17, 2008.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. E8-6049 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0013; Directorate Identifier 2007-NM-230-AD; Amendment 39-15448; AD 2008-07-07]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 727-200 Series Airplanes Equipped with an Auxiliary Fuel Tank System Installed in Accordance with Supplemental Type Certificate SA1350NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 727-200 series airplanes. This AD requires deactivating auxiliary fuel tank systems installed in accordance with Supplemental Type Certificate (STC) SA1350NM. This AD results from fuel tank system reviews conducted by the manufacturer that identified potential unsafe conditions for which the manufacturer has not provided corrective actions. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable

fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective April 30, 2008.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE-116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4148; fax (316) 946-4107.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 727-200 series airplanes. That NPRM was published in the **Federal Register** on January 14, 2008 (73 FR 2204). That NPRM proposed to require deactivating auxiliary fuel tank systems installed in accordance with Supplemental Type Certificate (STC) SA1350NM.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received. Linda Pulson, a private citizen, and Boeing support the NPRM.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for the 25 U.S.-registered airplanes to comply with this AD. Based on these figures, the estimated costs for U.S. operators could be as high as \$162,000 to prepare and report the deactivation procedures, and \$90,000 to deactivate the tank.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane
Report	1	\$80	None	\$80
Preparation of tank deactivation procedure	80	80	None	6,400
Physical tank deactivation	30	80	\$1,200	3,600

Authority for This Rulemaking

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

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

that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-07-07 DTAA, Inc.: Amendment 39-15448. Docket No. FAA-2008-0013; Directorate Identifier 2007-NM-230-AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 30, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 727-200 series airplanes, certificated in any category, equipped with an auxiliary fuel tank system installed in accordance with Supplemental Type Certificate SA1350NM.

Unsafe Condition

(d) This AD results from fuel tank system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Report

(f) Within 45 days after the effective date of this AD, submit a report to the Manager, Wichita Aircraft Certification Office (ACO), FAA. The report must include the information listed in paragraphs (f)(1) and (f)(2) of this AD. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD, and assigned OMB Control Number 2120-0056.

(1) The airplane registration and serial number.

(2) The usage frequency in terms of total number of flights per year and total number of flights per year for which the auxiliary fuel tank system is used.

Prevent Usage of Auxiliary Fuel Tank

(g) On or before December 16, 2008, deactivate the auxiliary fuel tank system, in accordance with a deactivation procedure approved by the Manager, Wichita ACO. Any auxiliary fuel tank system component that remains on the airplane must be secured and must have no effect on the continued operational safety and airworthiness of the airplane. Deactivation may not result in the need for additional Instructions for Continued Airworthiness (ICA).

Note 1: Appendix A of this AD provides criteria that must be included in the deactivation procedure. The proposed deactivation procedures should be submitted to the Manager, Wichita ACO as soon as possible to ensure timely review and approval, prior to implementation.

Note 2: For technical information, contact Steve Forness, DTAA, Inc., 101 Deer Meadow Court, St. Charles, Missouri 63304; telephone (636) 928-9606; fax (314) 749-7513.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Wichita ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(i) None.

Appendix A—Deactivation Criteria

The auxiliary fuel tank system deactivation procedure required by paragraph (g) of this AD should address the following actions.

(1) Permanently drain the auxiliary fuel tank system tanks, and clear them of fuel vapors to eliminate the possibility of out-gassing of fuel vapors from the emptied auxiliary tank.

(2) Disconnect all auxiliary fuel tank system electrical connections from the fuel quantity indication system (FQIS), float, pressure and transfer valves and switches, and all other electrical connections required for auxiliary fuel tank system operation, and stow them at the auxiliary fuel tank interface.

(3) Disconnect all auxiliary fuel tank system bleed-air connections, cap them at the bleed air source, and secure them.

(4) Disconnect all auxiliary fuel tank system fuel supply and fuel vent plumbing interfaces with airplane original equipment manufacturer (OEM) fuel tanks, cap them at the airplane tank side, and secure them. All disconnected auxiliary fuel tank system vent systems must not alter the OEM fuel tank vent system configuration or performance. All empty auxiliary fuel tank system tanks must be vented to eliminate the possibility of structural deformation during cabin decompression. The configuration must not permit the introduction of fuel vapor into any compartments of the airplane.

(5) Pull and collar all circuit breakers used to operate the auxiliary fuel tank system.

(6) Revise the weight and balance document, if required, and obtain FAA approval.

(7) Amend the applicable sections of the applicable Airplane Flight Manual (AFM) to indicate that the auxiliary fuel tank system is deactivated. Remove auxiliary fuel tank system operating procedures to ensure that only the OEM fuel system operational procedures are contained in the AFM.

Amend the Limitations Section of the AFM to indicate that the AFM Supplement for the STC is not in effect. Place a placard in the flight deck indicating that the auxiliary fuel tank system is deactivated. The AFM revisions specified in this paragraph may be accomplished by inserting a copy of this AD into the AFM.

(8) Amend the applicable sections of the applicable airplane maintenance manual to remove auxiliary fuel tank system maintenance procedures.

(9) After the auxiliary fuel tank system is deactivated, accomplish procedures such as leak checks, pressure checks, and functional checks deemed necessary before returning the airplane to service. These procedures must include verification that the basic airplane OEM FQIS, fuel distribution, and fuel venting systems function properly and have not been adversely affected by deactivation of the auxiliary fuel tank system.

(10) Include with the proposed deactivation procedures any relevant information or additional steps that are deemed necessary by the operator to comply with the deactivation of the auxiliary fuel tank system and return of the airplane to service.

Issued in Renton, Washington on March 18, 2008.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-6058 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2008-0328; Airspace Docket No. 08-ASW-4]

Establishment of Class E Airspace; Hinton, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action established Class E airspace at Hinton, OK. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Hinton Muni Airport has made this action necessary. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Hinton Muni Airport, OK.

DATES: *Effective Dates:* 0901 UTC June 5, 2008. Comments for inclusion in the rules Docket must be received by May 12, 2008. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of

Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2008-0328/Airspace Docket No. 08-ASW-4, at the beginning of your comments. You may also submit comments through the Internet at <http://regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Joe Yadouga, Central Service Center, System Support Group, Federal Aviation Administration, Southwest Region, Ft. Worth, TX 76193-0503; telephone (817) 222-5597.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date of the rule. If the FAA receives, within the comment period, an adverse or negative comment, or written comment notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written date, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the

direct final rule. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the direct final rule. Commenters wishing the FAA to acknowledge receipt of their comments on this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2008-0328, Airspace Docket No. 08-ASW-4." The postcard will be date/time stamped and returned to the commenter. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Hinton, OK, providing the airspace required to support the new RNAV (GPS) RWY 17/35 approach developed for IFR landings at Hinton Muni Airport. Controlled airspace extending upward from 700 feet above the surface is required to encompass all SIAPs and for the safety of IFR operations at Hinton Muni Airport. Designations for Class E airspace areas extending upward from 700 feet above the surface of the earth are published in the FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implication under Executive Order 13132.

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, is non-controversial and unlikely to result in adverse or negative comments. 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 since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, Part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it established Class E airspace at Hinton Muni Airport, Hinton, OK.

Lists of Subjects in 14 CFR, Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 Amended

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designation and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASW OK E5 Hinton, OK [New]
Hinton Muni Airport, OK

(Lat 35°30'26" N, long 98°20'33" W)

That airspace extending upward from 700 feet above the surface within a 6.45-mile radius of Hinton Muni Airport.

* * * * *

Issued in Fort Worth, TX, on March 13, 2008.

Gene L. Kasson,

Acting Manager, System Support Group, ATO Central Service Center.

[FR Doc. E8-5931 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA-2008-N-0160] (formerly Docket No. 2002N-0276)

Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to change the fax number to which food facility registration forms under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) can be sent. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: This rule is effective March 26, 2008.

FOR FURTHER INFORMATION CONTACT: Catherine Copp, Center for Food Safety and Applied Nutrition (HFS-4), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-2379.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in part 1 (21 CFR part 1). Several sections in part 1 cite a fax number to which food facility registration forms under the Bioterrorism Act (Public Law 107-188) can be sent. This rule replaces the obsolete information with correct information.

The final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Publication of this document constitutes final action on these changes

under the Administrative Procedure Act (5 U.S.C. 553). These amendments remove obsolete information and are not substantive. FDA therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and comment are unnecessary.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1 is amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. Section 1.231 is amended by revising paragraph (b)(2) to read as follows:

§ 1.231 How and where do you register?

* * * * *

(b) * * *

(2) When you receive the form, you must fill it out completely and legibly and either mail it to the address in paragraph (b)(1) of this section or fax it to 301-436-2804 or 1-800-573-0846.

* * * * *

■ 3. Section 1.234 is amended by revising paragraph (d)(2) to read as follows:

§ 1.234 How and when do you update your facility's registration information?

* * * * *

(d) * * *

(2) When you receive the form, you must legibly fill out the sections of the form reflecting your updated information and either mail it to the address in paragraph (d)(1) of this section or fax it to 301-436-2804 or 1-800-573-0846.

* * * * *

■ 4. Section 1.235 is amended by revising paragraph (d)(2) to read as follows:

§ 1.235 How and when do you cancel your facility's registration information?

* * * * *

(d) * * *

(2) When you receive the form, you must completely and legibly fill out the form and either mail it to the address in

paragraph (d)(1) of this section or fax it to 301-436-2804 or 1-800-573-0846.

* * * * *

Dated: March 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-6052 Filed 3-25-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 17

Civil Money Penalties Hearings; Maximum Penalty Amounts; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its civil money penalties regulations to correct an inadvertent typographical error. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: This rule is effective March 26, 2008.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Preparedness (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7010.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR part 17 to correct an inadvertent typographical error.

Publication of this document constitutes final action on this change under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedures are unnecessary because FDA is merely correcting a nonsubstantive error.

List of Subjects in 21 CFR Part 17

Administrative practice and procedure, Penalties.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 17 is amended as follows:

PART 17—CIVIL MONEY PENALTIES HEARINGS

■ 1. The authority citation for 21 CFR part 17 continues to read as follows:

Authority: 21 U.S.C. 331, 333, 337, 351, 352, 355, 360, 360c, 360f, 360i, 360j, 371; 42 U.S.C. 262, 263b, 300aa-28; 5 U.S.C. 554, 555, 556, 557.

■ 2. In § 17.2, revise the introductory text to read as follows:

§ 17.2 Maximum penalty amounts.

The following table shows maximum civil monetary penalties associated with the statutory provisions authorizing civil monetary penalties under the act or the Public Health Service Act:

* * * * *

Dated: March 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-6082 Filed 3-25-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate and Nicarbazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug

application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved, single-ingredient Type A medicated articles containing bacitracin methylene disalicylate and nicarbazine to formulate two-way combination drug Type C medicated feeds for broiler chickens.

DATES: This rule is effective March 26, 2008.

FOR FURTHER INFORMATION CONTACT: Timothy Schell, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8116, e-mail: *timothy.schell@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., 440 Rt. 22, Bridgewater, NJ 08807, filed NADA 141-279 that provides for use of BMD (bacitracin methylene disalicylate) and NICARB (nicarbazine) Type A medicated articles to formulate two-way combination drug Type C medicated feeds for broiler chickens. The NADA is approved as of February 21, 2008, and the regulations are amended in 21 CFR 558.366 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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 558

Animal drugs, Animal feeds.

■ 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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In the table in paragraph (d) of § 558.366, alphabetically add new entries for “Bacitracin methylene disalicylate 4 to 50” and “Bacitracin methylene disalicylate 50” to read as follows:

§ 558.366 Nicarbazine.

* * * * *

(d) * * *

Nicarbazine in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
113.5 (0.0125 pct)	*	* *	* *	*
	Bacitracin methylene disalicylate 4 to 50.	Broiler chickens; aid in preventing outbreaks of cecal (<i>Eimeria tenella</i>) and intestinal (<i>E. acervulina</i> , <i>E. maxima</i> , <i>E. necatrix</i> , and <i>E. brunetti</i>) coccidiosis; for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis; do not use in flushing mashers; do not feed to laying hens; withdraw 4 days before slaughter.	046573
	Bacitracin methylene disalicylate 50.	Broiler chickens; aid in preventing outbreaks of cecal (<i>Eimeria tenella</i>) and intestinal (<i>E. acervulina</i> , <i>E. maxima</i> , <i>E. necatrix</i> , and <i>E. brunetti</i>) coccidiosis; as an aid in the prevention of necrotic enteritis caused or complicated by <i>Clostridium</i> spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis; do not use in flushing mashers; do not feed to laying hens; withdraw 4 days before slaughter.	046573

Dated: March 12, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8-6063 Filed 3-25-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF STATE

22 CFR Part 123

[Public Notice: 6147]

Amendment to the International Traffic in Arms Regulations: North Atlantic Treaty Organization (NATO)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR), to clarify United States policy to allow for reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to the North Atlantic Treaty Organization (NATO), and its agencies, as well as to NATO member governments.

DATES: *Effective Date:* This rule is effective March 26, 2008.

ADDRESSES: Interested parties may submit comments at any time by any of the following methods:

- *E-mail:*

DDTCResponseTeam@state.gov with an appropriate subject line.

- *Mail:* Department of State,

Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, ITAR Part 123, SA-1, 12th Floor, Washington, DC 20522-0112.

Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at <http://regulations.gov/index.cfm>.

FOR FURTHER INFORMATION CONTACT:

Director Ann Ganzer, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663-2792 or Fax (202) 261-8199; E-mail *DDTCResponseTeam@state.gov*. ATTN: Regulatory Change, Part 123.

SUPPLEMENTARY INFORMATION: To clarify the current regulation, it is necessary to explicitly provide that NATO and its agencies, in addition to the government of a NATO country, or the governments of Australia or Japan, are authorized without the prior written approval of the Directorate of Defense Trade Controls, upon meeting certain conditions, to reexport or retransfer U.S.-origin components incorporated into a foreign defense article.

Regulatory Analysis and Notices

Administrative Procedure Act

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

Regulatory Flexibility Act

Since this amendment involves a foreign affairs function of the United States, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this amendment.

Executive Order 12866

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

Paperwork Reduction Act

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

List of Subjects in 22 CFR Part 123

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 123 is amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 1. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105-261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107-228.

■ 2. Section 123.9 is amended by revising paragraph (e) introductory text to read as follows:

§ 123.9 Country of ultimate destination and approval of reexports or retransfers.

* * * * *

(e) Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to NATO, NATO agencies, a government of a NATO country, or the governments of Australia or Japan, are authorized without the prior written approval of the Directorate of Defense Trade Controls, provided:

* * * * *

Dated: March 10, 2008.

John C. Rood,

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

[FR Doc. E8-6019 Filed 3-25-08; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203, 206, 210, 216, 218, and 227

[Docket No. MMS-2008-MRM-0021]

RIN 1010-AD20

Reporting Amendments

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The MMS is amending existing regulations for reporting production and royalties on oil, gas, coal and other solid minerals, and geothermal resources produced from Federal and Indian leases in order to align the regulations with current MMS business practices. These amendments reflect changes that were implemented as a result of major reengineering of MMS financial systems and other legal requirements.

DATES: Effective Date: April 25, 2008.

FOR FURTHER INFORMATION CONTACT: Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225; telephone (303) 231-3495; FAX (303) 231-3781; e-mail Hyla.Hurst@mms.gov. The principal authors of this rule are Lorraine Corona, Louise Williams, Sarah Inderbitzin, Richard Adamski, and Paul Kneeven of Minerals Revenue Management, MMS, Department of the Interior.

SUPPLEMENTARY INFORMATION:

I. Background

The MMS implemented integrated reengineered systems on November 1, 2001. This process included a major reengineering of the Minerals Revenue Management (MRM) financial system. The new systems are the core systems support for MMS implementation of new royalty management business processes for the 21st century. The new systems were developed around new business processes and have been designed to be more effective and efficient. The reengineering, as well as other changes required by law, resulted in changes to, or elimination of, some forms and requirements. This final rule eliminates references to forms that are no longer used. However, elimination of these forms does not eliminate the requirements for record retention and making records available for audits and reviews of royalty payments.

This final rule amends the Code of Federal Regulations (CFR) in order to (1) align MMS regulations with the updated Form MMS-2014, Report of Sales and Royalty Remittance, which is approved by the Office of Management and Budget (OMB) under OMB Control Number 1010-0140; (2) eliminate references in the regulations to report forms, designations, systems, and codes that are no longer used; (3) update references to OMB-approved information collections; (4) revise the due date for production reports submitted electronically; (5) clarify the requirement for production reporting of inventory on leases and units until all production has ceased and all inventory has been disposed of; (6) eliminate references to Federal oil and gas late and incorrect (erroneous) reporting assessments and failure to report; (7) eliminate references to some electronic reporting options that no longer exist as a result of reengineering; and (8) clarify the reporting requirement for taxpayer identification numbers.

In the proposed rule published on July 7, 2006 (71 FR 38545), we overlooked a number of references in 30

CFR part 206 to the term *selling arrangement*, which was eliminated under revised reporting practices. As explained in the proposed rule, before October 1, 2001, MMS required payors to report at the selling arrangement level on Form MMS-2014, which entailed reporting one line for each sale under each type of contract. Effective October 1, 2001, the revised Form MMS-2014 allows payors to “roll up” all sales (including pooled sales) under a contract type—referred to as a “sales type code”—to one line per lease.

For transportation allowances, the existing rules prescribe a limit of 50 percent of the sales value on the basis of a “selling arrangement,” which is currently defined as the individual contractual arrangements under which production is sold or disposed of. Under the new regulations, a transportation allowance limit would apply to the collective sales of a specific sales type such as all of the lessee’s arm’s-length sales from a lease. For Indian leases in an index zone, this change will have no effect on gas valued based upon the index-based methodology in 30 CFR 206.172. We have not received any requests to exceed the 50-percent allowance limit for Indian leases, resulting in no effect on Indian lease revenue. We have, however, received requests to exceed the 50-percent allowance limit for Federal leases. However, the impact to Federal revenue due to this reporting change is insignificant.

Appropriate changes to the regulatory text are included in this final rule. In addition, several technical updates are made in parts 203 and 227 to align with the revised 30 CFR citations.

II. Comments on the Proposed Rule

The MMS received comments from one respondent on the proposed rule. The respondent represents a tribal organization.

Comment 1: The respondent states that the proposed rule applies the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA) to Indian lands by applying the reengineered systems to Indian lease reporting in order to increase effectiveness and efficiency.

MMS Response: The MMS does not agree. The MMS is not applying RSFA to Indian lands. Rather, MMS is applying several laws dating back to the early part of the 20th century that are designed to ensure that all Federal agencies conduct operations in the most effective, efficient, and economical manner possible. The Budget and Accounting Act of 1921, 31 U.S.C. 702, established the Government

Accountability Office (then the General Accounting Office) (GAO) as an independent agency, with its current mission to help improve the performance and ensure the accountability of the Federal Government. The GAO accomplishes its mission by providing reliable information and informed analysis to Congress, Federal agencies, and the public. Furthermore, GAO recommends improvements through financial and other performance audits to determine whether public funds are being spent efficiently and effectively. The Inspector General Act of 1978, Public Law 95-452, established the Department of the Interior Office of Inspector General to provide leadership and coordination and to recommend policies for activities designed to promote economy, efficiency, and effectiveness. The goal of the Government Performance and Results Act of 1993, Public Law 103-62, is to improve public confidence in Federal agency performance by requiring that federally funded agencies develop and implement an accountability system based on performance measurement, including setting goals and objectives and measuring progress toward achieving them. The Paperwork Reduction Act of 1995 (PRA) requires Federal agencies to reduce, minimize, and control burdens and maximize the public benefit of information collections. Therefore, our information collections are independent of RSFA mandates. The MMS operates under all these mandates to ensure that our business practices are efficient, effective, and economical.

Comment 2: The respondent disagrees with the proposed changes to improve reporting requirements, saying they are unjustified when applied to Indian lease reporting. The respondent states that the proposed elimination of forms and the reduced information available to the Government appear to be a retrenchment to the “we’ll catch it on the audit” mentality. The respondent further states that the reengineering processes described in the proposed rulemaking might serve the purposes of increased automation and efficiency contemplated or mandated by RSFA, but those requirements to simplify royalty reporting “emphatically do not apply to Indian lands.”

MMS Response: The MMS does not agree. This final rule does not change current MMS reporting requirements, but simply aligns the regulations with our current business processes. Furthermore, as stated above, the MMS has a responsibility to ensure that all its operations are efficient, effective, and economical, which predates and is

independent of RSFA mandates. Furthermore, the reengineered reporting systems were developed with the full involvement of all MMS stakeholders, including the respondent. In 1995, the Department of the Interior established a Royalty Policy Committee (RPC) under the Minerals Management Advisory Board. The purpose of RPC is to provide advice on the Department's management of Federal and Indian mineral leases, revenues, and other minerals-related policies. The RPC included representatives from states, Indian tribes and allottee organizations, minerals industry associations, the general public, and Federal agencies. At its first meeting in September 1995, the RPC established eight subcommittees, including the Reporting and Production Accounting Subcommittee. This Subcommittee (whose membership included four Indian representatives) was established to focus on improving and streamlining reporting for production and royalties on Federal and Indian mineral leases. The Subcommittee published a report in July 1996 that was approved by RPC during the June 4, 1996, meeting. The record of that RPC meeting contains no objections to the Subcommittee's proposed improved processing of Indian lease reporting from either the respondent or any other Indian representative. Reengineered reporting was discussed at subsequent RPC meetings and other public meetings as MMS continued to accept stakeholder input.

The MMS does not agree with the respondent's statement that this rulemaking is a retrenchment to a "we'll catch it on the audit" mentality. The proposed rule addressed reporting, not compliance. The changes to MMS reporting and financial systems as a result of reengineering required a comprehensive review of our information collections to eliminate duplication and to ensure that all remaining collections are efficient, effective, and economical while fully supporting compliance activities. The elimination of some forms did not eliminate the requirement for the information, but consolidated the information on fewer forms. These changes resulted in a reduction of 44,501 industry reporting burden hours and are in compliance with the PRA. Using a rate of \$50 per hour, the reengineered reporting saved industry \$2.2 million per year (44,501 burden hours \times \$50 = \$2,225,050), without compromising MMS compliance and audit activities.

The elimination of the Report of Monthly Operations (Form MMS-3160) and reliance on the Oil and Gas

Operations Report (Form MMS-4054) enables an integrated, computerized comparison of production and royalty reports to verify that proper royalties are received for the minerals produced. This approach is more effective and efficient than a manually intensive comparison. The reengineering processes served the purposes of increased automation and efficiency as mandated by law. No MMS operation is exempt from those requirements.

III. Procedural Matters

1. Summary Cost and Royalty Impact Data

This rule does not impose any additional costs/savings or royalty impacts on any of the potentially affected groups. There will be no change in royalties or administrative burdens to industry, state and local governments, Indian tribes, individual Indian mineral owners, or the Federal Government.

This rule amends existing MMS regulations to align the CFR with current MMS business practices, which were implemented as a result of major reengineering of MMS financial systems. The net impact of reengineering resulted in an overall estimated annual savings in reporting costs (on a continuing basis) of \$2,225,050 (44,501-burden-hour reduction \times \$50). However, the reporting changes and reduced costs of reengineering have already been incorporated into 13 information collection requests (ICR), which have been published in the **Federal Register** and approved by OMB. The effects of the seven eliminated report forms were either incorporated into these ICRs or were associated with insignificant burden hour reduction. For a current listing of OMB-approved ICRs, see the chart in 30 CFR 210.10.

Under this rule, MMS no longer accepts social security numbers (SSNs) to meet the requirement to report using a taxpayer identification number (TIN). To protect an individual's privacy, MMS requires the use of an Employer Identification Number (EIN) as a TIN for reporting purposes. The one-time cost to obtain an EIN from the Internal Revenue Service (IRS) is covered under an IRS information collection request (OMB Control Number 1545-0003, expires August 31, 2008).

2. Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule, and OMB has not reviewed this rule under Executive Order 12866.

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. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way.

3. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way.

4. This rule does not raise novel legal or policy issues. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way.

3. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way.

4. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Does not have an annual effect on the economy of \$100 million or more. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way. Small businesses were among those in industry affected by reengineering our business processes. New reporting requirements were covered in the appropriate ICRs, published for public comment in the **Federal Register**, and approved by OMB. The effects on small businesses included a reduction in reporting costs, as shown in the "Summary Cost and Royalty Impact Data" above.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way.

3. Does 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. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way.

5. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

6. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way. A takings implication assessment is not required.

7. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way. A Federalism Assessment is not required.

8. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

1. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
2. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

9. Consultation with Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule amends the CFR to align the regulations with current MMS business processes. It does not change current MMS reporting requirements in any material way. This rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments. This rule also has no significant impact on individual Indian mineral owners.

10. Paperwork Reduction Act

This rule does not contain new information collection requirements or significantly change existing information collections; therefore, a submission to OMB is not required. There was no change in the information collection from the proposed to the final rule. The MMS received one comment on the proposed rule concerning the reporting requirements for Indian lands; however, it did not pertain to the currently approved burden hours. The MMS response is explained in Section II of the Preamble.

The 13 information collections referenced in this rule and listed in the chart below are currently approved by OMB and include a total burden of 273,101 hours.

OMB control number, short title, and expiration date	Form or information collected	Annual burden hours
1010-0073, 30 CFR Part 220, Net Profit Share Payment—September 30, 2008.	No form for the following collection: • Net profit share payment information.	1,583
1010-0087, 30 CFR Parts 227, 228, and 229, Delegation to States and Cooperative Activities with States and Indian Tribes—August 31, 2009.	No forms for the following collections: • Written delegation proposal to perform auditing and investigative activities. • Request for cooperative agreement and subsequent requirements.	6,194
1010-0090, 30 CFR Part 216, Stripper Royalty Rate Reduction Notification—December 31, 2010.	Form MMS-4377, Stripper Royalty Rate Reduction Notification.	180
1010-0103, 30 CFR Parts 202 and 206, Indian Oil and Gas Valuation—June 30, 2009.	Form MMS-4109, Gas Processing Allowance Summary Report. Form MMS-4295, Gas Transportation Allowance Report. Form MMS-4110, Oil Transportation Allowance Report. Form MMS-4411, Safety Net Report. Form MMS-4410, Accounting for Comparison [Dual Accounting]. Form MMS-4393, Request to Exceed Regulatory Allowance Limitation ¹ .	1,276
1010-0107, 30 CFR Part 218, Collection of Monies Due the Federal Government—August 31, 2008.	Form MMS-4425, Designation Form for Royalty Payment Responsibility. No forms for the following collections: • Cross-lease netting documentation. • Indian recoupment approval.	1,220
1010-0119, 30 CFR Part 208, Royalty in Kind (RIK) Oil and Gas—February 28, 2009.	Form MMS-4070, Application for the Purchase of Royalty Oil Form MMS-4071, Letter of Credit (RIK). Form MMS-4072, Royalty-in-Kind Contract Surety Bond. No form for the following collection: • Royalty oil sales to eligible refiners.	2,284

OMB control number, short title, and expiration date	Form or information collected	Annual burden hours
1010-0120, 30 CFR Parts 202, 206, 210, 212, 217, and 218, Solid Minerals and Geothermal Collections—December 31, 2010.	Form MMS 4430, Solid Minerals Production and Royalty Report. Form 4292, Coal Washing Allowance Report. Form 4293, Coal Transportation Allowance Report. No forms for the following collections: • Facility data-solid minerals. • Sales contracts-solid minerals. • Sales summaries-solid minerals.	3,670
1010-0122, 30 CFR Part 243, Suspensions Pending Appeal and Bonding—July 31, 2008.	Form MMS-4435, Administrative Appeal Bond Form MMS-4436, Letter of Credit. Form MMS-4437, Assignment of Certificate of Deposit. No forms for the following collections: • Self bonding. • U.S. Treasury securities.	300
1010-0136, 30 CFR Parts 202 and 206, Federal Oil and Gas Valuation—June 30, 2009.	Form MMS-4393, Request to Exceed Regulatory Allowance Limitation ¹ . No form for the following collection: • Federal oil valuation support information.	20,504
1010-0139, 30 CFR Parts 210 and 216, Production Accounting—October 31, 2009.	Form MMS-4054, Oil and Gas Operations Report Form MMS-4058 (Parts A, B, and C), Production Allocation Schedule Report.	2 76,631
1010-0140, 30 CFR Part 210, Forms and Reports—November 30, 2009.	Form MMS-2014, Report of Sales and Royalty Remittance	158,821
1010-0155, 30 CFR Part 204, Alternatives for Marginal Properties—June 30, 2009.	No form for the following collection: • Notification and relief request for accounting and auditing relief.	406
1010-0162, CFO Act of 1992, Accounts Receivable Confirmations—March 31, 2009.	No form for the following collection: • Accounts receivable confirmations.	32
Total Burden Hours	273,101

¹ Form MMS-4393 is used for both Federal and Indian oil and gas leases. The form resides with ICR 1010-0136, but the burden hours for Indian leases are included in ICR 1010-0103.
² Nonhour cost: \$600,000.

The Paperwork Reduction Act provides that 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.

11. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required. This rule deals with financial matters and has no direct effect on MMS decisions on environmental activities. Royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the requirement to prepare a detailed statement or environmental assessment.

12. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

13. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

14. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes, and found no significant impacts. We also extended our review to individual Indian mineral owners and determined no significant impact on them.

List of Subjects in 30 CFR Parts 203, 206, 210, 216, 218, and 227

Coal, Solid minerals, Continental Shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Oil and gas, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: March 13, 2008.

C. Stephen Allred,
Assistant Secretary for Land and Minerals Management.

■ For reasons stated in the preamble, MMS is amending 30 CFR parts 203, 206, 210, 216, 218, and 227 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart B—OCS Oil, Gas, and Sulfur General

■ 2. Amend § 203.41 by revising paragraphs (b) introductory text and (d) introductory text to read as follows:

§ 203.41 If I have a qualified well, what royalty relief will my lease earn?

* * * * *

(b) We will suspend royalties on gas volumes produced on or after May 3, 2004, reported on the Oil and Gas Operations Report, Part A (OGOR-A) for your lease under 30 CFR part 210, Subpart C—Production Reports—Oil and Gas, as and to the extent prescribed in § 203.42.

* * * * *

(d) We will suspend royalties on gas volumes produced on or after May 3, 2004, reported on the Oil and Gas Operations Report, Part A (OGOR-A) for your lease under 30 CFR part 210,

Subpart C—Production Reports—Oil and Gas, as and to the extent prescribed in § 203.42.

* * * * *

■ 3. Amend § 203.44 by revising paragraph (b) introductory text to read as follows:

§ 203.44 If I drill a certified unsuccessful well, what royalty relief will my lease earn?

* * * * *

(b) We will suspend royalties on oil and gas volumes produced on or after May 3, 2004, reported on the Oil and Gas Operations Report, Part A (OGOR—A) for your lease under 30 CFR part 210, Subpart C—Production Reports—Oil and Gas, as and to the extent prescribed in § 203.45.

* * * * *

PART 206—PRODUCT VALUATION

■ 4. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart B—Indian Oil

■ 5. Amend § 206.51 as follows:

■ A. Remove the definition of “selling arrangement.”

■ B. Add in alphabetical order the definition of “sales type code” to read as follows:

§ 206.51 What definitions apply to this subpart?

* * * * *

Sales type code means the contract type or general disposition (e.g., arm’s-length or non-arm’s-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm’s-length or non-arm’s-length nature of a transportation allowance.

* * * * *

■ 6. Amend § 206.56 by revising paragraphs (b)(1), (b)(2), and (d) to read as follows:

§ 206.56 Transportation allowances—general.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, the transportation allowance deduction on the basis of a sales type code may not exceed 50 percent of the value of the oil at the point of sale as determined under § 206.52 of this subpart. Transportation costs cannot be transferred between sales type codes or to other products.

(2) Upon request of a lessee, MMS may approve a transportation allowance

deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception (using Form MMS-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. Under no circumstances may the value, for royalty purposes, under any sales type code, be reduced to zero.

* * * * *

(d) If, after a review or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee will pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or will be entitled to a credit without interest.

■ 7. Amend § 206.57 by revising paragraphs (c)(4) and (e)(1) to read as follows:

§ 206.57 Determination of transportation allowances.

* * * * *

(c) * * *

(4) Transportation allowances must be reported as a separate entry on Form MMS-2014, unless MMS approves a different reporting procedure.

* * * * *

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS-2014 for each month during the allowance form reporting period, the lessee must pay additional royalties due plus interest computed under 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has taken on Form MMS-2014 for each month during the allowance form reporting period, the lessee will be entitled to a credit without interest.

* * * * *

Subpart C—Federal Oil

■ 8. Revise § 206.116 to read as follows:

§ 206.116 What interest applies if I improperly report a transportation allowance?

(a) If you or your affiliate deducts a transportation allowance on Form MMS-2014 that exceeds 50 percent of the value of the oil transported without obtaining MMS’s prior approval under § 206.109, you must pay interest on the

excess allowance amount taken from the date that amount is taken to the date you or your affiliate files an exception request that MMS approves. If you do not file an exception request, or if MMS does not approve your request, you must pay interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties owed.

(b) If you or your affiliate takes a deduction for transportation on Form MMS-2014 by improperly netting an allowance against the oil instead of reporting the allowance as a separate entry, MMS may assess a civil penalty under 30 CFR part 241.

Subpart D—Federal Gas

■ 9. Amend § 206.151 as follows:

■ A. Revise the definition of “netting.”

■ B. Add in alphabetical order the definition of “sales type code.”

■ C. Remove the definition of “selling arrangement.”

The revision and addition read as follows:

§ 206.151 Definitions.

* * * * *

Netting means the deduction of an allowance from the sales value by reporting a net sales value, instead of correctly reporting the deduction as a separate entry on Form MMS-2014.

* * * * *

Sales type code means the contract type or general disposition (e.g., arm’s-length or non-arm’s-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm’s-length or non-arm’s-length nature of a transportation or processing allowance.

* * * * *

■ 10. Amend § 206.156 by revising paragraphs (c) and (d) to read as follows:

§ 206.156 Transportation allowances—general.

* * * * *

(c)(1) Except as provided in paragraph (c)(3) of this section, for unprocessed gas valued in accordance with § 206.152 of this subpart, the transportation allowance deduction on the basis of a sales type code may not exceed 50 percent of the value of the unprocessed gas determined under § 206.152 of this subpart.

(2) Except as provided in paragraph (c)(3) of this section, for gas production valued in accordance with § 206.153 of this subpart, the transportation allowance deduction on the basis of a sales type code may not exceed 50 percent of the value of the residue gas

or gas plant product determined under § 206.153 of this subpart. For purposes of this section, natural gas liquids will be considered one product.

(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitations prescribed by paragraphs (c)(1) and (c)(2) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraphs (c)(1) and (c)(2) of this section were reasonable, actual, and necessary. An application for exception (using Form MMS-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. Under no circumstances may the value for royalty purposes under any sales type code be reduced to zero.

(d) If, after a review or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee must pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.54, or will be entitled to a credit, with interest. If the lessee takes a deduction for transportation on Form MMS-2014 by improperly netting the allowance against the sales value of the unprocessed gas, residue gas, and gas plant products instead of reporting the allowance as a separate entry, MMS may assess a civil penalty under 30 CFR part 241.

§ 206.157 [Amended]

- 11. Amend § 206.157 as follows:
 - A. In the last sentence of paragraph (a)(1)(i), remove the word “line.”
 - B. In the third sentence of paragraph (b)(1), remove the word “line.”
 - C. Remove paragraph (d)(1) and redesignate paragraphs (d)(2) through (d)(4) as paragraphs (d)(1) through (d)(3), respectively.
- 12. Amend § 206.158 by revising paragraph (e) to read as follows:

§ 206.158 Processing allowances—general.

* * * * *

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee must pay any additional royalties, plus interest determined under 30 CFR 218.54, or will be entitled to a credit with interest. If the lessee takes a deduction for processing on Form MMS-2014 by improperly netting the allowance against the sales value of the gas plant products instead of reporting the allowance as a separate

entry, MMS may assess a civil penalty under 30 CFR part 241.

§ 206.159 [Amended]

- 13. Amend § 206.159 as follows:
 - A. In the last sentence of paragraph (a)(1)(i), remove the word “line.”
 - B. In the third sentence of paragraph (b)(1), remove the word “line.”
 - C. In paragraph (c)(1)(i), remove the word “line.”
 - D. In paragraph (c)(2)(i), remove the word “line.”
 - E. In paragraph (d) heading, remove the words “and assessments”.
 - F. Remove paragraph (d)(1) and redesignate paragraphs (d)(2) through (d)(4) as paragraphs (d)(1) through (d)(3), respectively.
 - G. In the last sentence of paragraph (e)(1), remove the words “without interest” and add in their place “with interest.”

Subpart E—Indian Gas

- 14. Amend § 206.171 as follows:
 - A. Remove the definition of “selling arrangement.”
 - B. Add in alphabetical order the definition of “sales type code” to read as follows:

§ 206.171 What definitions apply to this subpart?

* * * * *

Sales type code means the contract type or general disposition (e.g., arm’s-length or non-arm’s-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm’s-length or non-arm’s-length nature of a transportation or processing allowance.

* * * * *

§ 206.177 [Amended]

- 15. Amend § 206.177 as follows:
 - A. In the first sentence of paragraph (c)(1) remove the words “selling arrangement” and add in their place “sales type code.”
 - B. In the last sentence of paragraph (c)(2), remove the words “selling arrangement” and add in their place “sales type code.”

§ 206.178 [Amended]

- 16. In § 206.178, in the first sentence of paragraph (d)(2), remove the words “line item” and add in their place the word “entry.”

§ 206.180 [Amended]

- 17. In § 206.180, in the first sentence of paragraph (c)(2), remove the words “line item” and add in their place the word “entry.”

Subpart F—Federal Coal

- 18. Amend § 206.251 as follows:
 - A. Remove the definition of “selling arrangement.”
 - B. Add in alphabetical order the definition of “sales type code” to read as follows:

§ 206.251 Definitions.

* * * * *

Sales type code means the contract type or general disposition (e.g., arm’s-length or non-arm’s-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm’s-length or non-arm’s-length nature of a transportation or washing allowance.

* * * * *

- 19. Revise § 206.252 to read as follows:

§ 206.252 Information collection.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms, filing date, and approved OMB control numbers are identified in 30 CFR 210—Forms and Reports.

- 20. Amend § 206.254 by revising the last sentence to read as follows:

§ 206.254 Quality and quantity measurement standards for reporting and paying royalties.

* * * Coal quantity information will be reported on appropriate forms required under 30 CFR part 210—Forms and Reports.

§ 206.259 [Amended]

- 21. In § 206.259, in paragraph (d)(1), remove the words “selling arrangement” and add in their place the words “sales type code.”

§ 206.262 [Amended]

- 22. In § 206.262, in paragraph (d)(1), remove the words “selling arrangement” and add in their place the words “sales type code.”

Subpart J—Indian Coal

- 25. Amend § 206.451 as follows:
 - A. Remove the definition of “selling arrangement.”
 - B. Add in alphabetical order the definition of “sales type code” to read as follows:

§ 206.451 Definitions.

* * * * *

Sales type code means the contract type or general disposition (e.g. arm’s-length or non-arm’s-length) of

production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm's-length or non-arm's-length nature of a transportation or washing allowance.

* * * * *

■ 26. Amend § 206.453 by revising the last sentence to read as follows:

§ 206.453 Quality and quantity measurement standards for reporting and paying royalties.

* * * Coal quantity information will be reported on appropriate forms required under 30 CFR part 210—Forms and Reports.

PART 210—FORMS AND REPORTS

■ 27. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 3506(a).

■ 28. Revise subparts A and B and add subparts C and D to read as follows:

Subpart A—General Provisions

Sec.

- 210.01 What is the purpose of this subpart?
- 210.02 To whom do these regulations apply?
- 210.10 What are the OMB-approved information collections?
- 210.20 What if I disagree with the burden hour estimates?
- 210.21 How do I report my taxpayer identification number?
- 210.30 What are my responsibilities as a reporter/payor?
- 210.40 Will MMS keep the information I provide confidential?

Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources

- 210.50 What is the purpose of this subpart?
- 210.51 Who must submit royalty reports?
- 210.52 What royalty reports must I submit?
- 210.53 When are my royalty reports and payments due?
- 210.54 Must I submit this royalty report electronically?
- 210.55 May I submit this royalty report manually?

- 210.56 Where can I find more information on how to complete the royalty report?
- 210.60 What definitions apply to this subpart?

Subpart C—Production Reports—Oil and Gas

- 210.100 What is the purpose of this subpart?
- 210.101 Who must submit production reports?
- 210.102 What production reports must I submit?
- 210.103 When are my production reports due?
- 210.104 Must I submit these production reports electronically?
- 210.105 May I submit these production reports manually?
- 210.106 Where can I find more information on how to complete these production reports?

Subpart D—Special-Purpose Forms and Reports—Oil, Gas, and Geothermal Resources

- 210.150 What is the purpose of this subpart?
- 210.151 What reports must I submit to claim an excess allowance?
- 210.152 What reports must I submit to claim allowances on an Indian lease?
- 210.153 What reports must I submit for Indian gas valuation purposes?
- 210.154 What documents or other information must I submit for Federal oil valuation purposes?
- 210.155 What reports must I submit for Federal onshore stripper oil properties?
- 210.156 What reports must I submit for net profit share leases?
- 210.157 What reports must I submit to suspend an MMS order under appeal?
- 210.158 What reports must I submit to designate someone to make my royalty payments?

Subpart A—General Provisions

§ 210.01 What is the purpose of this subpart?

This subpart identifies information collections required by the Minerals Management Service (MMS), Minerals Revenue Management (MRM), in the normal course of operations. This information is submitted by various parties associated with Federal and

Indian leases such as lessees, designees, and operators. The information collected meets the MMS congressionally mandated accounting and auditing responsibilities relating to Federal and Indian minerals revenue management. Information collected regarding production, royalties, and other payments due the Government from activities on leased Federal or Indian land is authorized by the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1701 *et seq.*), as well as 43 U.S.C. 1334 and 30 U.S.C. 189, 359, 396, and 396d for oil and gas production; and by 30 U.S.C. 189, 359, 396, and 396d for solid minerals production.

§ 210.02 To whom do these regulations apply?

The regulations apply to any person, referred to in this subpart as “you,” “your,” or “reporter/payor,” who is a lessee under any Federal or Indian lease for any mineral or who is assigned or assumes an obligation to report data or make payment to MMS. The term reporter/payor may include lessees, designees, operators, purchasers, reporters, other payors, and working interest owners, but is not restricted to these parties. This section does not affect the liability to pay and report royalties as established by other regulations, laws, and the lease terms.

§ 210.10 What are the OMB-approved information collections?

The information collection requirements identified in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* Detailed information about each information collection request (ICR), including CFR citations, is included on the MMS Web site at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRNotices.htm. The ICRs and associated MMS form numbers, if applicable, are listed below:

OMB control number and short title	Form or information collected
1010–0073, 30 CFR Part 220, Net Profit Share Payment	No form for the following collection: <ul style="list-style-type: none"> • Net profit share payment information.
1010–0087, 30 CFR Parts 227, 228, and 229, Delegation to States and Cooperative Activities with States and Indian Tribes.	No forms for the following collections: <ul style="list-style-type: none"> • Written delegation proposal to perform auditing and investigative activities. • Request for cooperative agreement and subsequent requirements.
1010–0090, 30 CFR Part 216, Stripper Royalty Rate Reduction Notification.	Form MMS–4377, Stripper Royalty Rate Reduction Notification.
1010–0103, 30 CFR Parts 202 and 206, Indian Oil and Gas Valuation	Form MMS–4109, Gas Processing Allowance Summary Report. Form MMS–4295, Gas Transportation Allowance Report. Form MMS–4110, Oil Transportation Allowance Report. Form MMS–4411, Safety Net Report. Form MMS–4410, Accounting for Comparison [Dual Accounting]. Form MMS–4393, Request to Exceed Regulatory Allowance Limitation. ¹

OMB control number and short title	Form or information collected
1010-0107, 30 CFR Part 218, Collection of Monies Due the Federal Government.	Form MMS-4425, Designation Form for Royalty Payment Responsibility. No forms for the following collections: • Cross-lease netting documentation. • Indian recoupment approval.
1010-0119, 30 CFR Part 208, Royalty in Kind (RIK) Oil and Gas	Form MMS-4070, Application for the Purchase of Royalty Oil. Form MMS-4071, Letter of Credit (RIK). Form MMS-4072, Royalty-in-Kind Contract Surety Bond. No form for the following collection: • Royalty oil sales to eligible refiners.
1010-0120, 30 CFR Parts 202, 206, 210, 212, 217, and 218, Solid Minerals and Geothermal Collections.	Form MMS 4430, Solid Minerals Production and Royalty Report. Form 4292, Coal Washing Allowance Report. Form 4293, Coal Transportation Allowance Report. No forms for the following collections: • Facility data—solid minerals. • Sales contracts—solid minerals. • Sales summaries—solid minerals.
1010-0122, 30 CFR Part 243, Suspensions Pending Appeal and Bonding.	Form MMS-4435, Administrative Appeal Bond. Form MMS-4436, Letter of Credit. Form MMS-4437, Assignment of Certificate of Deposit. No forms for the following collections: • Self bonding. • U.S. Treasury securities.
1010-0136, 30 CFR Parts 202 and 206, Federal Oil and Gas Valuation	Form MMS-4393, Request to Exceed Regulatory Allowance Limitation. ¹ No form for the following collection: • Federal oil valuation support information.
1010-0139, 30 CFR Parts 210 and 216, Production Accounting	Form MMS-4054, Oil and Gas Operations Report. Form MMS-4058 (Parts A, B, and C), Production Allocation Schedule Report.
1010-0140, 30 CFR Part 210, Forms and Reports	Form MMS-2014, Report of Sales and Royalty Remittance.
1010-0155, 30 CFR Part 204, Alternatives for Marginal Properties	No form for the following collection: • Notification and relief request for accounting and auditing relief.
1010-0162, CFO Act of 1992, Accounts Receivable Confirmations	No form for the following collection: • Accounts receivable confirmations.

¹ Form MMS-4393 is used for both Federal and Indian oil and gas leases. The form resides with ICR 1010-0136, but the burden hours for Indian leases are included in ICR 1010-0103.

§ 210.20 What if I disagree with the burden hour estimates?

Burden hour estimates are included on the MMS Web site at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRNotices.htm. Send comments on the accuracy of these burden estimates or suggestions on reducing the burden to the Minerals Management Service, Attention: Information Collection Clearance Officer (OMB Control Number 1010-XXXX [insert appropriate OMB control number]), Mail Stop 4230, 1849 C Street, NW., Washington, DC 20240. 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.

§ 210.21 How do I report my taxpayer identification number?

(a) Before paying or reporting to MMS, you must obtain a payor code (see the MMS *Minerals Revenue Reporter Handbook*, which is available on the Internet at <http://www.mrm.mms.gov/ReportingServices/PDFDocs/RevenueHandbook.pdf>; also see § 210.56 for further information on how

to obtain a handbook). At the time you request a payor code, you must provide your Employer Identification Number (EIN) by submitting:

- (1) An IRS Form W-9; or
- (2) An equivalent certification containing:
 - (i) Your name;
 - (ii) The name of your business, if different from your name;
 - (iii) The form of your business entity; for example, a sole proprietorship, corporation, or partnership;
 - (iv) The address of your business;
 - (v) The EIN of your business; and
 - (vi) A signed and dated certification that you are a U.S. citizen or resident alien and that the EIN number provided is correct.

(b) If you are already paying or reporting to MMS but do not have an EIN, MMS may request that you submit an IRS Form W-9 or equivalent certification containing the information required under paragraph (a)(2) of this section.

(c) The collection of this data is not subject to the provisions of the Paperwork Reduction Act because only information necessary to identify the

respondent [5 CFR 1320.3(h)] is required.

(d) The EIN you provide to MMS under paragraph (a) of this section:

- (1) Means the taxpayer identification number (TIN) of an individual or other person (whether or not an employer), which is assigned under 26 U.S.C. 6011(b), or a corresponding version of prior law, or under 26 U.S.C. 6109;
- (2) Must contain nine digits separated by a hyphen as follows: 00-0000000; and
- (3) May not be a Social Security Number.

§ 210.30 What are my responsibilities as a reporter/payor?

Each reporter/payor must submit accurate, complete, and timely information to MMS according to the requirements in this part. If you discover an error in a previous report, you must file an accurate and complete amended report within 30 days of your discovery of the error. If you do not comply, MMS may assess civil penalties under 30 CFR part 241.

§ 210.40 Will MMS keep the information I provide confidential?

The MMS will treat information obtained under this part as confidential to the extent permitted by law as specified at 43 CFR part 2.

Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources**§ 210.50 What is the purpose of this subpart?**

The purpose of this subpart is to explain royalty reporting requirements when energy and mineral resources are removed from Federal and Indian oil and gas and geothermal leases and federally approved agreements. This includes leases and agreements located onshore and on the Outer Continental Shelf (OCS).

§ 210.51 Who must submit royalty reports?

(a) Any person who pays royalty to MMS must submit royalty reports to MMS.

(b) Before you pay or report to MMS, you must obtain a payor code. To obtain a payor code, refer to the MMS *Minerals Revenue Reporter Handbook* for instructions and MMS contact information (also see § 210.56 for information on how to obtain a handbook).

§ 210.52 What royalty reports must I submit?

You must submit a completed Form MMS–2014, Report of Sales and Royalty Remittance, to MMS with:

- (a) All royalty payments; and
- (b) Rents on nonproducing leases, where specified in the lease.

§ 210.53 When are my royalty reports and payments due?

(a) Completed Forms MMS–2014 for royalty payments and the associated payments are due by the end of the month following the production month (see also § 218.50).

(b) Completed Forms MMS–2014 for rental payments, where applicable, and the associated payments are due as specified by the lease terms (see also § 218.50).

(c) You may submit reports and payments early.

§ 210.54 Must I submit this royalty report electronically?

(a) You must submit Form MMS–2014 electronically unless you qualify for an exception under § 210.55(a).

(b) You must use one of the following electronic media types, unless MMS instructs you differently:

- (1) Electronic Data Interchange (EDI)—The direct computer-to-computer

interchange of data using standards set forth by the X12 American National Standards Institute (ANSI) Accredited Standards Committee (ASC). The interchange uses the services of a third party with which either party may contract.

(2) Web-based reporting—Reporters/payors may enter report data directly or upload files using the MMS electronic web form located at <http://www.mrmreports.net>. The uploaded files must be in one of the following formats: the American Standard Code for Information Interchange (ASCII) or Comma Separated Values (CSV) formats. External files created by the sender must be in the proprietary ASCII and CSV file layout formats defined by MMS. These external files can be generated from a reporter's system application.

(c) Refer to our electronic reporting guidelines in the MMS *Minerals Revenue Reporter Handbook*, for the most current reporting options, instructions, and security measures. The handbook may be found on our Internet Web site or you may call your MMS customer service representative (see § 210.56 for further information on how to obtain a handbook).

§ 210.55 May I submit this royalty report manually?

(a) The MMS will allow you to submit Form MMS–2014 manually if:

- (1) You have never reported to MMS before. You have 3 months from the date your first report is due to begin reporting electronically;
- (2) You report only rent, minimum royalty, or other annual obligations on Form MMS–2014; or
- (3) You are a small business, as defined by the U.S. Small Business Administration, and you have no computer.

(b) If you meet the qualifications under paragraph (a) of this section, you may submit your form manually to MMS by:

- (1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 5810, Denver, Colorado 80217–5810; or
- (2) Special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.56 Where can I find more information on how to complete the royalty report?

(a) Specific guidance on how to prepare and submit Form MMS–2014 is contained in the MMS *Minerals Revenue Reporter Handbook*. The handbook is available on our Internet

Web site at <http://www.mrm.mms.gov/ReportingServices/Handbooks/Handbks.htm> or from MMS at P.O. Box 5760, Denver, Colorado 80217–5760.

(b) Reporters/payors should refer to the handbook for specific guidance on royalty reporting requirements. If you require additional information, you should contact MMS at the above address. A customer service telephone number is also listed in our handbook.

(c) You may find Form MMS–2014 on our Internet Web site at http://www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm, or you may request the form from MMS at P.O. Box 5760, Denver, Colorado 80217–5760.

§ 210.60 What definitions apply to this subpart?

Terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

Subpart C—Production Reports—Oil and Gas**§ 210.100 What is the purpose of this subpart?**

The purpose of this subpart is to explain production reporting requirements when energy and mineral resources are removed from Federal and Indian oil and gas leases and federally approved agreements. This includes leases and unit and communitization agreements located onshore and on the Outer Continental Shelf (OCS).

§ 210.101 Who must submit production reports?

(a) If you operate a Federal or Indian oil and gas lease or federally approved unit or communitization agreement, you must submit production reports.

(b) Before reporting production to MMS, you must obtain an operator number. To obtain an operator number, refer to the MMS *Minerals Production Reporter Handbook* for instructions and MMS contact information (also see § 210.106 for information on how to obtain a handbook).

§ 210.102 What production reports must I submit?

(a) Form MMS–4054, Oil and Gas Operations Report. If you operate a Federal or Indian onshore or OCS oil and gas lease or federally approved unit or communitization agreement that contains one or more wells that are not permanently plugged or abandoned, you must submit Form MMS–4054 to MMS:

- (1) You must submit Form MMS–4054 for each well for each calendar month, beginning with the month in which you complete drilling, unless:
 - (i) You have only test production from a drilling well; or
 - (ii) The MMS tells you in writing to report differently.

(2) You must continue reporting until:

(i) The Bureau of Land Management (BLM) or MMS approves all wells as permanently plugged or abandoned or the lease or unit or communitization agreement is terminated; and

(ii) You dispose of all inventory.

(b) Form MMS-4058, Production Allocation Schedule Report. If you operate an offshore facility measurement point (FMP) handling production from a Federal oil and gas lease or federally approved unit agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination, you must file Form MMS-4058.

(1) You must submit Form MMS-4058 for each calendar month beginning with the month in which you first handle production covered by this section.

(2) Form MMS-4058 is not required whenever all of the following conditions are met:

(i) All leases involved are Federal leases;

(ii) All leases have the same fixed royalty rate;

(iii) All leases are operated by the same operator;

(iv) The facility measurement device is operated by the same person as the leases/agreements;

(v) Production has not been previously measured for royalty determination; and

(vi) The production is not subsequently commingled and measured for royalty determination at an FMP for which Form MMS-4058 is required under this part.

§ 210.103 When are my production reports due?

(a) The MMS must receive your completed Forms MMS-4054 and MMS-4058 by the 15th day of the second month following the month for which you are reporting.

(b) A report is considered received when it is delivered to MMS by 4 p.m. mountain time at the addresses specified in § 210.105. Reports received after 4 p.m. mountain time are considered received the following business day.

§ 210.104 Must I submit these production reports electronically?

(a) You must submit Forms MMS-4054 and MMS-4058 electronically unless you qualify for an exception under § 210.105.

(b) You must use one of the following electronic media types, unless MMS instructs you differently:

(1) Electronic Data Interchange (EDI)—The direct computer-to-computer

interchange of data using standards set forth by the X12 American National Standards Institute (ANSI) Accredited Standards Committee (ASC). The interchange uses the services of a third party with which either party may contract.

(2) Web-based reporting—Reporters/payors may enter report data directly or upload files using the MMS electronic Web form located at <http://www.mrmreports.net>. The uploaded files must be in one of the following formats: the American Standard Code for Information Interchange (ASCII) or Comma Separated Values (CSV) formats. External files created by the sender must be in the proprietary ASCII and CSV file layout formats defined by MMS. These external files can be generated from a reporter's system application.

(c) Refer to our electronic reporting guidelines in the MMS *Minerals Production Reporter Handbook* for the most current reporting options, instructions, and security measures. The handbook may be found on our Internet Web site or you may call your MMS customer service representative (see § 210.106 for further information on how to obtain a handbook).

§ 210.105 May I submit these production reports manually?

(a) The MMS will allow you to submit Forms MMS-4054 and MMS-4058 manually if:

(1) You have never reported to MMS before. You have 3 months from the day your first report is due to begin reporting electronically; and

(2) You are a small business, as defined by the U.S. Small Business Administration, and you have no computer.

(b) If you meet the qualifications under paragraph (a) of this section, you may submit your forms manually to MMS by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 17110, Denver, Colorado 80217-0110; or

(2) Special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.106 Where can I find more information on how to complete these production reports?

(a) Specific guidance on how to prepare and submit production reports to MMS is contained in the MMS *Minerals Production Reporter Handbook*. The handbook is available on our Internet Web site at <http://www.mrm.mms.gov/ReportingServices/Handbooks/Handbks.htm> or from MMS at P.O. Box 17110, Denver, Colorado 80217-0110.

(b) Production reporters should refer to the handbook for specific guidance on production reporting requirements. If you require additional information, you should contact MMS at the above address. A customer service telephone number is also listed in our handbook.

(c) You may find Forms MMS-4054 and MMS-4058 on our Internet Web site at <http://www.mrm.mms.gov/ReportingServices/Forms/PAASOff.htm>, or you may request the forms from MMS at P.O. Box 17110, Denver, Colorado 80217-0110.

Subpart D—Special-Purpose Forms and Reports—Oil, Gas, and Geothermal Resources

§ 210.150 What is the purpose of this subpart?

This subpart identifies specific special-purpose reports and provides general information, reporting options, and reporting addresses. See § 210.10 for a complete listing of all information collections, including forms and references for specific information collections.

§ 210.151 What reports must I submit to claim an excess allowance?

(a) *General*. If you are a lessee, you must submit Form MMS-4393, Request to Exceed Regulatory Allowance Limitation, to request approval from MMS to exceed prescribed transportation and processing allowance limits on Federal oil and gas leases and prescribed transportation allowance limits on Indian oil and gas leases under part 206 of this chapter.

(b) *Reporting options*. You may find Form MMS-4393 on our Web site at http://www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm. You may also request the form from MMS at P.O. Box 25165, MS 392B2, Denver, Colorado 80217-0165.

(c) *Reporting address*. Submit completed Form MMS-4393 as follows:

(1) Complete and submit the form electronically as an e-mail attachment;

(2) Send the form by U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 392B2, Denver, Colorado 80217-0165; or

(3) Deliver the form to MMS by special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A-614, MS 392B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.152 What reports must I submit to claim allowances on an Indian lease?

(a) *General.* You must submit three additional forms to MMS to claim transportation or processing allowances on Indian oil and gas leases:

(1) You must submit Form MMS-4110, Oil Transportation Allowance Report, to claim an allowance for expenses incurred by a reporter/payor to transport oil from the lease site to a point remote from the lease where value is determined under § 206.55 of this chapter.

(2) You must submit Form MMS-4109, Gas Processing Allowance Summary Report, to claim an allowance for the reasonable, actual costs of removing hydrocarbon and nonhydrocarbon elements or compounds from a gas stream under § 206.180 of this chapter.

(3) You must submit Form MMS-4295, Gas Transportation Allowance Report, to claim an allowance for the reasonable, actual costs of transporting gas from the lease to the point of first sale under § 206.178 of this chapter.

(b) *Reporting options.* You may submit Forms MMS-4110, MMS-4109, and MMS-4295 manually. You may find the forms on our Internet Web site at http://www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm, or you may request the forms from MMS at P.O. Box 25165, MS 396B2, Denver, Colorado 80217-0165.

(c) *Reporting address.* You may submit completed Forms MMS-4110, MMS-4109, and MMS-4295 by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 396B2, Denver, Colorado 80217-0165; or

(2) Special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A-614, MS 396B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.153 What reports must I submit for Indian gas valuation purposes?

(a) *General.* For Indian gas valuation, under certain conditions under § 206.172 of this chapter, lessees must submit the following forms:

(1) Form MMS-4410, Accounting for Comparison (Dual Accounting), Part A or Part B; and/or

(2) Form MMS-4411, Safety Net Report.

(b) *Reporting options.* You must submit Forms MMS-4410 and MMS-4411 manually. You may find the forms on our Internet Web site at <http://www.mrm.mms.gov/ReportingServices/>

[Forms/AFSOil_Gas.htm](http://www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm) or request forms from MMS at P.O. Box 25165, MS 396B2, Denver, Colorado 80217-0165.

(c) *Reporting address.* You must submit completed Forms MMS-4410 and MMS-4411 by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 396B2, Denver, Colorado 80217-0165; or

(2) Special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A-614, MS 396B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.154 What documents or other information must I submit for Federal oil valuation purposes?

(a) *General.* The MMS may require you to submit documents or other information to MMS to support your valuation of Federal oil under part 206 as part of audit compliance.

(b) *Reporting options.* You must submit the documents or other information manually.

(c) *Reporting address.* You must submit required documents or other information by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 392B2, Denver, Colorado 80217-0165; or

(2) Special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A-614, MS 392B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.155 What reports must I submit for Federal onshore stripper oil properties?

(a) *General.* Operators who have been granted a reduced royalty rate by the Bureau of Land Management (BLM) under 43 CFR 3103.4-2 must submit Form MMS-4377, Stripper Royalty Rate Reduction Notification, under 43 CFR 3103.4-2(b)(3).

(b) *Reporting options.* You may find Form MMS-4377 on our Internet Web site at http://www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm or request the form from MMS at P.O. Box 17110, Denver, Colorado 80217-0110. You may file the form:

(1) Electronically by filling the form out in electronic format and submitting it to MMS as an e-mail attachment; or

(2) Manually by filling out the form and submitting it by:

(i) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165,

MS 392B2, Denver, Colorado 80217-0165; or

(ii) Special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A-614, MS 392B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.156 What reports must I submit for net profit share leases?

(a) *General.* After entering into a net profit share lease (NPSL) agreement, a lessee must report under part 220 of this chapter.

(b) *Reporting options.* You must submit the required report manually.

(c) *Reporting address.* You must submit the required documents by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 382B2, Denver, Colorado 80217-0165; or

(2) Special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A-614, MS 382B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.157 What reports must I submit to suspend an MMS order under appeal?

(a) *General.* Reporters/payors or other recipients of MMS Minerals Revenue Management (MRM) orders who appeal an order may be required to post a bond or other surety, under part 243 of this chapter. The MMS accepts the following surety types: Form MMS-4435, Administrative Appeal Bond; Form MMS-4436, Letter of Credit; Form MMS-4437, Assignment of Certificate of Deposit; Self-bonding; and U.S. Treasury Securities.

(b) *Reporting options.* You must submit these forms and other documents manually. You may find the forms and other documents under Surety Instrument Posting Instructions on our Internet Web site at http://www.mrm.mms.gov/Law_R_D/FRNotices/ICR0122.htm.

(c) *Reporting address.* You may submit the required forms and other documents as specified in the Surety Instrument Posting Instructions or by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 370B2, Denver, Colorado 80217-0165;

(2) Special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A-614, MS 370B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.158 What reports must I submit to designate someone to make my royalty payments?

(a) *General.* You must submit Form MMS-4425, Designation Form for Royalty Payment Responsibility, if you want to designate a person to make royalty payments on your behalf under § 218.52.

(b) *Reporting options.* You must submit Form MMS-4425 manually. You may find the form on our Internet Web site at http://www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm or request the form from MMS at P.O. Box 5760, Denver, Colorado 80217-5760.

(c) *Reporting address.* You must submit completed Form MMS-4425 by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 357B1, Denver, Colorado 80217-0165; or

(2) Special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A-614, MS 357B1, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

Subpart E—Production and Royalty Reports—Solid Minerals

■ 29. Revise the heading of subpart E to read as set forth above.

§§ 210.205 and 210.206 [Redesignated as §§ 210.206 and 210.207]

■ 30. Redesignate §§ 210.205 and 210.206 as §§ 210.206 and 210.207.

■ 31. Add new § 210.205 to read as follows:

§ 210.205 What reports must I submit to claim allowances on Indian coal leases?

General. You must submit the following MMS forms to claim a transportation or washing allowance, as applicable, on Indian coal leases:

(1) Form MMS-4292, Coal Washing Allowance Report, to claim an allowance for the reasonable, actual costs incurred to wash coal under § 206.458 of this chapter.

(2) Form MMS-4293, Coal Transportation Allowance Report, to claim an allowance for the reasonable, actual costs of transporting coal to a sales point or a washing facility remote from the mine or lease under § 206.461 of this chapter.

(b) *Reporting options.* You must submit the forms manually. You may find the forms on our Internet Web site at http://www.mrm.mms.gov/ReportingServices/Forms/AFSSol_Min.htm or request forms from MMS at P.O. Box 25165, MS 390B2, Denver, Colorado 80217-0165.

(c) *Reporting address.* You must submit completed Forms MMS-4292 and MMS-4293 by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 390B2, Denver, Colorado 80217-0165; or

(2) Special courier or overnight mail addressed to Minerals Management Service, Building 85, Room A-614, MS 390B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

PART 216—[REMOVED]

■ 32. Remove part 216.

PART 218—COLLECTION OF MONIES AND PROVISION FOR GEOTHERMAL CREDITS AND INCENTIVES

■ 33. Revise the heading of part 218 to read as set forth above.

■ 34. The authority citation for part 218 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3335; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart A—General Provisions

■ 35. Amend § 218.40 by revising paragraphs (a) through (c) to read as follows:

§ 218.40 Assessments for incorrect or late reports and failure to report.

(a) An assessment of an amount not to exceed \$10 per day may be charged for each report not received by MMS by the designated due date for geothermal, solid minerals, and Indian oil and gas leases.

(b) An assessment of an amount not to exceed \$10 per day may be charged for each incorrectly completed report for geothermal, solid minerals, and Indian oil and gas leases.

(c) For purpose of assessments discussed in this section, a report is defined as follows:

(1) For coal and other solid minerals leases, a report is each line on Form MMS-4430, Solid Minerals Production and Royalty Report; or on Form MMS-2014, Report of Sales and Royalty Remittance, as appropriate.

(2) For Indian oil and gas and all geothermal leases, a report is each line on Form MMS-2014.

* * * * *

■ 36. Amend § 218.41 by revising paragraphs (a) through (e) to read as follows:

§ 218.41 Assessments for failure to submit payment of same amount indicated on Form MMS-2014, Form MMS-4430, or a bill document; or to provide adequate information.

(a) The MMS may assess an amount not to exceed \$250 when the amount of a payment submitted by a reporter/payor for geothermal, solid minerals, and Indian oil and gas leases is not equivalent in amount to the total of individual line items on the associated Form MMS-2014, Form MMS-4430, or a bill document, unless MMS has authorized the difference in amount.

(b) The MMS may assess an amount not to exceed \$250 for each payment for geothermal, solid minerals, and Indian oil and gas leases submitted by a reporter/payor that cannot be automatically applied to the associated Form MMS-2014, Form MMS-4430, or a bill document because of inadequate or erroneous information submitted by the reporter/payor.

(c) For purposes of this section, inadequate or erroneous information is defined as:

(1) Absent or incorrect payor-assigned document number, required to be identified by the reporter/payor in Block 4 on Form MMS-2014 (document 4 number), or the reuse of the same incorrect payor-assigned document 4 number in a subsequent reporting period.

(2) Absent or incorrect bill document invoice number (to include the three-character alpha prefix and the nine-digit number) or the payor-assigned document 4 number required to be identified by the reporter/payor on the associated payment document, or the reuse of the same incorrect payor-assigned document 4 number in a subsequent reporting period.

(3) Absent or incorrect name of the administering Bureau of Indian Affairs Agency/Area office; or the word “allotted” or the tribe name on payment documents remitted to MMS for an Indian tribe or allottee. If the payment is made by EFT, the reporter/payor must identify the tribe/allottee on the EFT message by a pre-established five-digit code.

(4) Absent or incorrect MMS-assigned payor code on a payment document.

(5) Absent or incorrect identification on a payment document.

(d) For purposes of this section, the term “Form MMS-2014” includes submission of reports of royalty information, such as Form MMS-4430.

(e) For purposes of this section, a bill document is defined as any invoice that MMS has issued for assessments, late-payment interest charges, or other amount owed. A payment document is

defined as a check or wire transfer message.

* * * * *

Subpart B—Oil and Gas, General

■ 37. Amend § 218.50 by revising paragraph (b) to read as follows:

§ 218.50 Timing of payment.

* * * * *

(b) Invoices will be issued and payable as final collection actions. Payments made on an invoice are due as specified by the invoice.

* * * * *

■ 38. Amend § 218.51 by revising the definition of “Invoice Document Identification” in paragraph (a) and revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 218.51 How to make payments.

(a) * * * *Invoice Document Identification*—The MMS-assigned invoice document identification (three-alpha and nine-numeric characters).

* * * * *

(f) * * * (1) For Form MMS–2014 payments, you must include both your payor code and your payor-assigned document number.

(2) For invoice payments, including RIK invoice payments, you must include both your payor code and invoice document identification.

* * * * *

■ 39. Amend § 218.52 by revising paragraphs (a) introductory text, (a)(1), (a)(4)(i) and (c) introductory text to read as follows:

§ 218.52 How does a lessee designate a Designee?

(a) If you are a lessee under 30 U.S.C. 1702(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf under 30 U.S.C. 1712(a), you must notify MMS or the applicable delegated state in writing of such designation by submitting Form MMS–4425, Designation Form for Royalty Payment Responsibility. Your notification for each lease must include the following:

(1) The lease number for the lease;

* * * * *

(4) * * * (i) A lessee of record (record title owner) in the lease; or

* * * * *

(c) If you want to terminate a designation you made under paragraph (a) of this section, you must submit a revised Form MMS–4425 before the termination stating:

* * * * *

§ 218.57 [Removed]

■ 40. Remove § 218.57.

Subpart D—Oil, Gas and Sulfur Offshore

§ 218.154 [Amended]

■ 41. Amend § 218.154, paragraph (c), by removing the words “paragraph (a) of this section” and adding in their place the words “paragraph (b) of this section.”

■ 42. Amend § 218.155, paragraph (b)(2), by revising the fourth and fifth sentences to read as follows:

§ 218.155 Method of payment.

* * * * *

(b) * * *

(2) * * * The one-fifth bonus amounts submitted with bids other than the highest valid bid will be returned to respective bidders after bids are opened, recorded, and ranked. Return of such amounts will not affect the status, validity, or ranking of bids. * * *

* * * * *

PART 227—DELEGATION TO STATES

■ 43. Amend § 227.401(f) by revising to read as follows:

§ 227.401 What are a state’s responsibilities if it processes production reports or royalty reports?

* * * * *

(f) For production reports, maintain adequate system software edits to ensure compliance with the provisions of 30 CFR part 210—Forms and Reports, the MMS *Minerals Production Reporter Handbook*, any interagency memorandum of understanding to which MMS is a party, and the *Standards*;

* * * * *

[FR Doc. E8–5929 Filed 3–25–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0074]

RIN 1625–AA08

Special Local Regulations for Marine Events; Western Branch, Elizabeth River, Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local

regulations during the “Virginia State Hydroplane Championship” power boat races, a marine event to be held on the waters of the Western Branch of the Elizabeth River at Portsmouth, Virginia on April 19 and 20, 2008. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Western Branch of the Elizabeth River during the event.

DATES: This rule is effective from 8 a.m. on April 19, 2008 through 6 p.m. on April 20, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0074 and are available online at www.regulations.gov. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Fifth Coast Guard District, Inspections and Investigations Branch, 431 Crawford Street, Portsmouth, VA 23704 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Fifth Coast Guard District, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION: Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the event. The danger posed by high speed power boat races makes special local regulations necessary to provide for the safety of event participants, support vessels, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

Background and Purpose

On April 19 and 20, 2008, Virginia Boat Racing Association will sponsor the "Virginia State Hydroplane Championship" hydroplane races on the waters of the Western Branch, Elizabeth River at Portsmouth, Virginia. The event will consist of approximately 60 hydroplane powerboats conducting high-speed competitive races on the Western Branch of the Elizabeth River in the vicinity of Portsmouth City Park, Portsmouth, Virginia. A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the hydroplane races.

Discussion of Rule

The special local regulations will be enforced from 8 a.m. to 6 p.m. on April 19 and 20, 2008, and will restrict navigation in the regulated area during the hydroplane races. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period. The regulated area is needed to control vessel traffic during the event to enhance the safety of participants and transiting vessels.

In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, local newspapers and radio stations so mariners can adjust their plans accordingly.

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Western Branch of the Elizabeth River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be

in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Western Branch, Elizabeth River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions

annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). 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 rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.ID 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)(h), of the

Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under that section.

Under figure 2-1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

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

Words of Issuance and Regulatory Text

■ For the reasons discussed in the preamble, the Coast Guard amends 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. Add a temporary § 100.35–T05–018 to read as follows:

§ 100.35–T05–018, Western Branch, Elizabeth River, Portsmouth, VA.

(a) *Regulated area* includes all waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50'06" N, longitude 076°22'27" W, thence to latitude 36°50'06" N, longitude 076°21'57" W, thence to latitude 36°50'15" N, longitude 076° 21'55.8" W, thence to latitude 36°50'15" N, longitude 076°22'27" W, thence to point of origin. All coordinates reference Datum: NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Virginia State Hydroplane Championship under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(c) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no

person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 6 p.m. on April 19 and 20, 2008. A notice of enforcement of this section will be disseminated through the Fifth Coast Guard District Local Notice to Mariners announcing the specific event date and times. Notice will also be made via broadcast notice to mariners on VHF-FM marine band radio channel 22 (157.1 MHz).

Dated: March 17, 2008.

Fred M. Rosa, Jr.,

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

[FR Doc. E8-6154 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG-2008-0177]

Drawbridge Operation Regulations; Harlem River, New York City, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the TBTA Bridge across the Harlem River, mile 1.3, at New York City, New York. Under this temporary deviation the TBTA Bridge may remain in the closed position from May 1, 2008 through August 31, 2008. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from May 1, 2008 through August 31, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0177 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of

Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668-7165.

SUPPLEMENTARY INFORMATION: The TBTA Bridge, across the Harlem River at mile 1.3, at New York City, New York, has a vertical clearance in the closed position of 54 feet at mean high water and 59 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.789(d).

The owner of the bridge, Triborough Bridge & Tunnel Authority (TBTA), requested a temporary deviation to facilitate scheduled bridge maintenance, cleaning and painting. The mariners that normally transit this bridge do not require bridge openings.

Under this temporary deviation the TBTA Bridge may remain in the closed position from May 1, 2008 through August 31, 2008. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

Dated: March 17, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8-6151 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2008-0084]

Drawbridge Operation Regulations; Raritan River, Perth Amboy, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the NJTRO Bridge, across the Raritan River, mile 0.5, at Perth Amboy, New Jersey. Under this temporary deviation the draw may remain in the closed position on March 29 and 30, 2008, with a rain date of April 5 and 6, 2008, in the event of inclement weather. Vessels that can pass under the draw without an opening may do so at all times. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from March 29, 2008 through April 6, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0084 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668-7165.

SUPPLEMENTARY INFORMATION: The NJTRO Bridge, across the Raritan River, mile 0.5, at Perth Amboy, New Jersey, has a vertical clearance in the closed position of 8 feet at mean high water and 13 feet at mean low water. The existing regulations are listed at 33 CFR 117.747.

The owner of the bridge, New Jersey Transit Rail Operations (NJTRO), requested a temporary deviation to facilitate scheduled mechanical maintenance at the bridge.

In order to perform the bridge maintenance the bridge must remain in the closed position.

Under this temporary deviation the NJTRO Bridge across the Raritan River, mile 0.5, at Perth Amboy, New Jersey, need not open for the passage of vessel traffic on March 29 and 30, 2008, with a rain date of April 5 and 6, 2008, in the event inclement weather prevents the bridge maintenance from being performed on the former date. Vessels that can pass under the draw without a bridge opening may do so at all times.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 17, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8-6152 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG-2008-0151]

Drawbridge Operation Regulations; State Boat Channel, Babylon, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Robert Moses Causeway Bridge across the State Boat Channel at mile 30.7, at Babylon, New York. Under this temporary deviation the Robert Moses Causeway Bridge may remain in the closed position from March 31, 2008 through June 15, 2008. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from March 31, 2008 through June 15, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the

docket are part of docket USCG–2008–0151 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Robert Moses Causeway Bridge, across the State Boat Channel at mile 30.7, at Babylon, New York, has a vertical clearance in the closed position of 29 feet at normal channel pool elevation and 100 feet of horizontal clearance in the main channel. The existing drawbridge operation regulations are listed at 33 CFR 117.799(i).

The owner of the bridge, New York Department of Transportation, requested a temporary deviation to facilitate scheduled bridge rehabilitation and painting operations.

Under this temporary deviation the Robert Moses Causeway Bridge may remain in the closed position from March 31, 2008 through June 15, 2008. Vessels that can pass under the draw without a bridge opening may do so at all times; however, vertical and horizontal clearances may be reduced at various locations. Further information regarding vertical and horizontal clearance reductions will be published in the Local Notice to Mariners.

This work was scheduled during the time of year when the bridge seldom opens. The recreational boat marinas were contacted and have no objection to the bridge closure.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners

and the **Federal Register**, where practicable.

Dated: March 17, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–6153 Filed 3–25–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0173]

RIN 1625–AA00

Safety Zone; Longwood Events Wedding Fireworks Display, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Longwood Events Wedding Fireworks display to be held on March 29, 2008 in Boston, Massachusetts. The zone temporarily closes all waters of Boston Harbor within a four hundred (400) yard radius of the fireworks launch site located in Boston Harbor at approximate position 42°21'42" N, 071°2'36" W. The safety zone is necessary to protect the maritime public from the potential hazards posed by a fireworks display. Entry into this zone is prohibited during the closure period unless authorized by the Captain of the Port Boston, Massachusetts.

DATES: This rule is effective from 8:45 p.m. through 9:45 p.m. on March 29, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0173 and are available online at www.regulations.gov. They are also available for inspection or copying two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Sector Boston, Prevention Department, 427 Commercial Street, Boston, MA 02109 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Chief Petty Officer Eldridge

McFadden, Waterways Management Division at 617–223–5160. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, because the logistics with respect to the fireworks presentation were not determined with sufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Boston Harbor during the fireworks display and to provide for the safety of life on navigable waters. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Atlas Pyrovision is conducting a fireworks display on behalf of a wedding coordinated by Longwood Events. This rule establishes a temporary safety zone on the waters of Boston Harbor within a four hundred (400) yard radius of the fireworks launch site located in Boston harbor at approximate position 42°21'42" N, 071°2'36" W. This safety zone is necessary to protect the life and property of the maritime public from the potential dangers posed by this event. The zone will protect the public by prohibiting entry into or movement within the proscribed portion of Boston Harbor during the fireworks display. Marine traffic may transit safely outside of the zone during the effective period. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to and during the effective period via safety marine information broadcasts and Local Notice to Mariners.

Discussion of Rule

This rule is effective from 8:45 p.m. through 9:45 p.m. on March 29, 2008. Marine traffic may transit safely outside of the safety zone in the majority of Boston Harbor during the event. Given the limited time-frame of the effective period of the zone and the time of the event, the Captain of the Port anticipates minimal negative impact on vessel

traffic due to this event. Public notifications will be made prior to and during the effective period via Local Notice to Mariners and marine information broadcasts.

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. Although this rule will prevent traffic from transiting a portion of Boston Harbor during the fireworks display, the effect of this rule will not be significant for several reasons: Vessels will be excluded from the safety zone for less than one hour, vessels, although excluded from the zone, will have sufficient navigable water to safely maneuver in the waters surrounding the zone; and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Boston Harbor from 8:45 p.m. through 9:45 p.m. on March 29, 2008. This safety zone will not have a significant economic impact on a substantial number of small entities for the reason described under the Regulatory Evaluation section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in

understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). 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 rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.ID

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. Under figure 2–1, paragraph (34)(g), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule because it concerns an emergency situation of less than 1 week in duration.

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 temporary § 165.T01–0173 to read as follows:

§ 165.T01–0173 Safety Zone: Longwood Events Wedding Fireworks Display, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone:

All waters of Boston Harbor, from surface to bottom, within a four hundred (400) yard radius of the fireworks launch site located in Boston Harbor at approximate position 42°21'42"N, 071°2'36"W.

(b) *Effective Date.* This rule is effective from 8:45 p.m. through 9:45 p.m. on March 29, 2008.

(c) *Definitions.* (1) Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port (COTP).

(2) [Reserved]

(d) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone by any

person or vessel is prohibited unless authorized by the Captain of the Port (COTP), Boston or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission by calling the Sector Boston Command Center at 617–223–5761. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative.

Dated: March 12, 2008.

Gail P. Kulisch,

Captain, U.S. Coast Guard, Captain of the Port, Sector Boston.

[FR Doc. E8–6149 Filed 3–25–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30, 31, 33, 35, and 40

[Docket ID NO. EPA–HQ–OA–2002–0001; FRL–8545–9]

RIN 2090–AA38

Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action will harmonize EPA's statutory Disadvantaged Business Enterprise procurement objectives with the United States Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). In that case, the Supreme Court extended strict judicial scrutiny to federal programs that use racial or ethnic criteria as a basis for decision making. Remedying discrimination is recognized as a compelling government interest, and this rule is promulgated on the understanding that the statutory provisions authorizing its adoption were enacted for that remedial purpose. This rule sets forth a narrowly tailored EPA program to serve the compelling government interest of remedying past and current racial discrimination through agency-wide DBE procurement objectives. EPA intends to evaluate the propriety of the Disadvantaged Business

Enterprise program in 7 years through subsequent rulemaking. This rule also revises EPA's Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) program and renames it EPA's Disadvantaged Business Enterprise (DBE) Program. EPA is removing existing MBE/WBE specific provisions in regulations for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations; and uniform administrative requirements for grants and cooperative agreements to state and local governments, state and local assistance, and research and demonstration grants, and is consolidating and adding to these provisions in this new regulation. This rule affects only procurements under EPA financial assistance agreements. This rule does not apply to direct Federal procurement actions. If you are a recipient of an EPA financial assistance agreement or an entity receiving an identified loan under a financial assistance agreement capitalizing a revolving loan fund, this rule may affect you.

DATES: This final rule is effective May 27, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OA–2002–0001. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Kimberly Patrick, Attorney Advisor, Office of the Administrator, Office of Small and Disadvantaged Business Utilization (OSDBU) by phone at (202) 566–2605, by e-mail at patrick.kimberly@epa.gov, or by fax at (202) 566–0548; or Cassandra Freeman, Deputy Director, Office of the Administrator, OSDBU by phone at

(202) 566-1968, by e-mail at freeman.cassandra@epa.gov, or by fax at (202) 566-0266. Both can be reached by mail to OSDBU, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., mail code 1230T, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of this final rule are listed in the following outline:

Contents of the Final Rule

- I. General Information
 - A. Does This Rule Apply to Me?
 - B. What are the Statutory Authorities for this Final Rule?
- II. Background
- III. Overview of Final Rule
- IV. Summary of Response to Public Comments
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act of 1995
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. General Information

A. Does This Rule Apply to Me?

If you are a recipient of an EPA financial assistance agreement, or an entity receiving an identified loan under a financial assistance agreement capitalizing a revolving loan fund, or a minority-owned, woman-owned, or small business, this rule may affect you. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Are the Statutory Authorities for This Final Rule?

EPA's primary statutory authorities for this final rule are:

1. Public Law 102-389 (42 U.S.C. 4370d), a 1993 appropriations act ("EPA's 8% statute"), which provides:

The Administrator of the Environmental Protection Agency shall, hereafter, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of

authorized programs, including grants, loans and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women * * *; and

2. Public Law 101-549, Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) ("EPA's 10% statute"), which states:

In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments which use funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of the total Federal funding for such research will be made available to disadvantaged business concerns. Nothing in this title shall permit or require the use of quotas or a requirement that has the effect of a quota in determining eligibility * * *

Other legal authorities and Executive Orders regarding this final rule include Public Law 99-499, the Superfund Amendments and Reauthorization Act of 1986; Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988; Executive Order 12138, "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women's Business Enterprise," issued May 18, 1979; Executive Order 11625, "Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise," issued October 13, 1971; and Executive Order 12432, "Minority Business Enterprise Development," issued July 14, 1983.

II. Background

EPA's current Minority Business Enterprise/Woman-owned Business Enterprise ("MBE/WBE") program has three major components designed to ensure that minority and women-owned businesses have the opportunity to participate in procurements funded by EPA financial assistance agreements. Those components are as follows:

1. *Negotiating Fair Share Goals:* The current MBE/WBE program requires all recipients of EPA financial assistance agreements to negotiate goals with the Agency for the utilization of MBEs/WBEs for procurements funded by EPA financial assistance agreements. The goals are based on disparity studies or

availability analyses showing the availability of MBEs or WBEs in the financial assistance recipient's relevant geographic buying market. These goals do not operate as quotas.

2. *Using the "Six Positive Efforts" or "Six Affirmative Steps":* The "Six Positive Efforts" or "Six Affirmative Steps" are measures designed to ensure MBEs and WBEs are considered in a financial assistance recipient's procurement practices, and they contain measures a recipient may undertake to make procurements more open to MBEs and WBEs.

3. *Reporting Accomplishments:* Under the current MBE/WBE program, recipients of EPA financial assistance agreements are required to report on their accomplishments with the program using EPA Form 5700-52A. Reporting is the tool we use to assess whether or not the program is effective and actually translating into increased opportunities for MBEs and WBEs.

EPA's MBE/WBE Program is currently implemented through:

(1) Existing MBE and WBE provisions scattered throughout 40 CFR parts 30, 31, 35 and 40;

(2) Grant conditions; and

(3) The Agency's "Guidance for the Utilization of Small, Minority, and Women's Business Enterprises in Assistance Agreements."

In 1995, the Supreme Court's decision in *Adarand Constructors, Inc. v. Federico Pena*, Secretary of Transportation, 515 U.S. 200 ("Adarand"), extended strict judicial scrutiny to federal affirmative action programs that use racial or ethnic criteria as a basis for decisionmaking. In other words, such programs must be based on a compelling governmental interest, for example, remedying the effects of discrimination, and must be narrowly tailored to accomplish that interest.

Following the Adarand decision, in 1996, the Department of Justice (DOJ) began a review of affirmative action programs in the Federal Government. In response to this review, the Department of Transportation (DOT), whose DBE program mirrored EPA's MBE/WBE program, revised its program for participation of DBEs in procurements under DOT's financial assistance agreements to comply with the Adarand decision (See 64 FR 5096). This final rule reflects EPA's efforts to similarly comply.

Remedying discrimination is recognized as a compelling government interest, and this rule is promulgated on the understanding that the statutory provisions authorizing its adoption were enacted for that remedial purpose. This

rule sets forth a narrowly tailored EPA program to serve the compelling government interest of remedying past and current racial discrimination through agency-wide DBE procurement objectives. EPA intends to evaluate the propriety of the Disadvantaged Business Enterprise program in 7 years through subsequent rulemaking.

This final rule requires recipients to use race/gender-neutral measures to ensure DBEs have meaningful opportunities to bid on recipient-sponsored procurements. It does not require recipients to use race/gender-conscious measures. However, if a recipient elects to use such measures, the recipient should satisfy itself that the measure meets all applicable legal requirements, including those established in *Adarand*. Because this rule only requires race/gender-neutral measures, it should not be subject to strict judicial scrutiny. Even so, we believe this rule is narrowly tailored to achieve a compelling governmental interest consistent with *Adarand*.

EPA worked collaboratively on this rulemaking with various program offices within the Agency, the EPA Office of General Counsel, and the EPA Regions. We also held discussions with other Federal agencies, including SBA and DOT whose DBE programs are in some ways similar to ours, or have undergone changes similar to the ones we are implementing. EPA has also collaborated with the Civil Rights Division of DOJ throughout the rulemaking process.

III. Overview of Final Rule

This rulemaking removes all of EPA's current MBE/WBE fair share objectives and good faith efforts regulatory provisions and replaces them with DBE provisions to be codified in the new 40 CFR part 33. In addition, this rule supersedes inconsistent provisions of previous guidance documents for EPA's former MBE and WBE Program, including, but not limited to, EPA's "Guidance for Utilization of Small, Minority, and Women's Business Enterprises in Procurement Under Assistance Agreements" (the 1997 Guidance), 62 FR 45645.

There are six substantive changes this rule will make to the way the program currently operates. Those changes involve: (1) Certification of minority and women-owned businesses; (2) the six good faith efforts; (3) contract administration requirements; (4) negotiation of fair share goals; (5) recordkeeping and reporting requirements; and (6) new requirements for Tribal and insular area fair share

negotiations. The specific changes are summarized as follows:

1. Certification

Under the current MBE/WBE program EPA recognizes Small Business Administration (SBA) certifications, or certifications by a State or other Federal Agency, or self-certifications. EPA currently does not require WBEs to be certified.

Under the new DBE program promulgated today, in order to be counted as an MBE or WBE under an EPA financial assistance agreement, an entity will have to be certified as such. EPA will require an MBE/WBE to first seek certification by a federal agency (e.g., the Small Business Administration (SBA), the Department of Transportation (DOT)), or by a State, locality, Indian Tribe, or independent private organization provided their applicable criteria match those under section 8(a) (5) and (6) of the Small Business Act and SBA's applicable 8(a) Business Development Program regulations. EPA will only consider certifying firms that cannot get certified by one of these entities. Requiring firms to first seek certification from other sources is beneficial for the business entity because an EPA certification is limited in that it would only be accepted by EPA. Certifications from other sources have broader applications. Also, requiring firms to first seek certification from other sources reduces the burden on the Agency associated with processing certifications.

The creation and implementation of an EPA certification program is necessary because the statutory authority for EPA's program includes classifications of businesses that are not currently certified by other sources. Businesses that fall within these classifications would potentially have no other option for certification to participate in EPA's DBE program. EPA anticipates that the following types of entities will have to be considered for certification by EPA:

1. Disabled American-owned firms;
2. Private and voluntary organizations controlled by individuals who are socially and economically disadvantaged;
3. Women-owned and minority owned-businesses who cannot get certified under DOT or SBA size criteria (EPA does not have size criteria) or by a State Government, local Government, Indian Tribal Government or independent private organization;
4. Businesses owned or controlled by socially and economically disadvantaged individuals (note—SBA and DOT require an entity to be owned

and controlled by socially and economically disadvantaged individuals. However, the statutory authority for EPA's DBE program requires ownership or control, Public Law 102-389); and

5. Women-owned business enterprises.

EPA certifications will last for three years as long as the certified entity files an annual affidavit affirming that no changes in circumstances have occurred which affected the entity's status as an MBE or WBE. Appeal procedures are provided for entities denied MBE or WBE certification, or anyone who disagrees with EPA's decision to certify an entity as an MBE or WBE.

2. Six Good Faith Efforts

The good faith efforts are activities by a recipient and its prime contractor to increase DBE awareness of procurement opportunities through race/gender neutral efforts. Race/gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance. For purposes of simplification, EPA has combined the "Six Positive Efforts" of 40 CFR 30.44 (b) applicable to institutions of higher education, hospitals and other non-profit organizations with the "Six Affirmative Steps" of 40 CFR 31.36(e) applicable to State, Local and Indian Tribal Government recipients and renamed them the six "good faith efforts."

3. Contract Administration Requirements

The rule adds additional contract administration requirements which are intended to prevent any "bait and switch" tactics at the subcontract level by prime contractors which may circumvent the spirit of the DBE Program as well as other related requirements. Some of these requirements include provisions intended to ensure that subcontractors receive prompt payment from prime contractors. In addition, this proposal would require a recipient to be notified in writing before its prime contractor could terminate a DBE subcontractor for convenience and then perform the work itself. Furthermore, when a DBE subcontractor is terminated or fails to complete its work under the subcontract for any reason, the recipient must require the prime contractor to make good faith efforts if the prime contractor chooses to hire another subcontractor. A recipient must also require its prime contractor to continue to make the good faith efforts even if the fair share objectives in subpart D of the rule have

been met. Finally, this rule provides for three new forms which are required if there are DBE subcontractors involved in a procurement.

4. Negotiation of Fair Share Goals (and \$250,000 Exemptions)

This rule codifies EPA's procedures for negotiating fair share goals with financial assistance recipients. The process for such negotiations is currently implemented through guidance, as well as through terms and conditions incorporated into EPA financial assistance agreements. This rulemaking keeps the current basic approach, with some fine tuning, including a provision which would exempt a recipient of a financial assistance agreement of \$250,000 or less for any assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in EPA funds in any one year, from the fair share objective negotiation requirement. In addition, eligible program grants which can be included in Performance Partnership Grants to Tribal and Tribal consortia recipients will be exempt from the fair share negotiation requirement due to the nature of these program grants and the

unique nature of eligible recipients. Superfund Technical Assistance Grants (TAG's) would be exempt due to the nature of their funding cycles. A recipient under the Clean Water State Revolving Fund, the Drinking Water State Revolving Fund, and the Brownfields Clean-Up Revolving Loan Fund is not required to apply the fair share objective requirements to an entity receiving an identified loan in an amount of \$250,000 or less.

5. Recordkeeping and Reporting Requirements

Currently, all financial assistance agreement recipients must report on a quarterly basis, except for recipients of continuing environmental program grants, and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance awards under 40 CFR part 30, who report on an annual basis. This rule will reduce the reporting frequency to semi-annually for all recipients who currently report on a quarterly basis.

This rule also requires all financial assistance recipients, and recipients of loans under CWSRF, DWSRF, or BCRLF Programs to create and maintain a bidders list. There is an exemption from

this requirement for recipients receiving grants or loans of \$250,000 or less for any single assistance agreement or loan, or of more than one financial assistance agreement or loan with a combined total of \$250,000 or less in EPA funds in any one year.

6. New Requirement for Tribal and Trust Territory Fair Share Negotiations

EPA does not currently negotiate fair share goals with Indian Tribal Government and Trust Territory recipients. This rule will require such recipients to negotiate fair share goals. Therefore, under the rule such recipients will have a three year phase-in period to adjust to the regulatory change. In the interim, they will still have to comply with the other requirements of this rule.

IV. Summary of Response to Public Comments

Excluding changes in wording to increase clarity, there are only four substantive changes reflected in this final rule. Those changes, along with a breakdown of the number and type of comments received, are below:

Number of Comments Received: 126

Primary areas of public concern	Number of comments	Percent of all comments
Certification	23	18
General (wording and clarification)	16	13
Good Faith Efforts	14	11
Subcontracting Provisions	12	9
Bidders List	11	9

Major Revisions Based on Public Comment (not including wording or clarification):

1. § 33.105—Enforcement Provisions

There were several comments concerning enforcement of the rule. A number of comments stated that there are no "teeth" in the program and that more policing of the program will be needed to insure compliance with the requirements of the rule. While the text of the rule mentions that EPA can take remedial action for non-compliance, it does not clearly state what those actions are. In an effort to show more "teeth," this section has been revised to include some of the remedial measures EPA can take if a recipient fails to comply with the requirements of the rule.

2. § 33.302—Subcontractor Provisions

Public comment requested that EPA specify the number of days within which a prime must pay its subcontractor after payment by the

recipient. In an effort to curtail the practice of excessively late subcontractor payments, the rule establishes maximum of 30 days by which a prime contractor must pay its subcontractor, after payment by the grant recipient.

3. § 33.501—Bidders List

Many comments were received requesting clarification about the contents, purpose and duration of the bidders list. The purpose of the Bidders List is to provide the recipient and entities receiving identified loans who conduct competitive bidding with a more accurate database of the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The bidders list is intended to be a list of all firms that are participating, or attempting to participate, on EPA assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs and

non-MBE/WBEs. The bidders list is designed to also aid recipients in their efforts to comply with the "six good faith efforts," by creating a source of MBEs and WBEs that can be relied upon to increase the inclusion of MBEs and WBEs in the recipient's procurement practices. Section 33.501(b) of the rule has been revised to read as follows:

A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs

and non-MBE/WBEs. The bidders list must be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and e-mail address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as an MBE/WBE or non-MBE/WBE.

In response to internal concerns regarding the application of the bidders list requirement, we have created an exemption to this provision. The exemption found at § 33.501(c) is as follows:

A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the paragraph (b) of this section requirement to create and maintain a bidders list. Also, a recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the paragraph (b) of this section bidders list requirement of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the paragraph (b) of this section bidders list requirements of this subpart.

4. § 33.502—Reporting

In response to internal and external comments, this section of the rule has been revised to require semiannual reporting for all recipients who currently report on a quarterly basis. All recipients who report annually will continue to do so.

A section-by-section analysis of the rule, addressing public comments in detail, can be found on the public docket for this rule making under Docket ID No. EPA-HQ-OA-2002-0001, at www.regulations.gov.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." This rule reflects and raises legal or policy issues arising out of legal mandates. This rule has a direct impact on contracting funded by EPA financial assistance agreements. There is substantial public interest concerning programs to ensure nondiscrimination

in federally assisted contracting, as well as policy concerns. This rule also affects a wide variety of parties, including all EPA financial assistance programs, and the DBE and non-DBE contractors that perform work under them. As a "significant regulatory action," EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

Based on currently available information about costs that may be associated with complying with this rule (e.g., costs to obtain MBE or WBE certification), EPA believes that this rule will not have an annual effect on the economy of \$100 million or more. Therefore, EPA did not prepare a regulatory impact statement for this rule.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2090-0030.

This ICR is for the purpose of ensuring that EPA's statutory DBE procurement goal requirements are implemented in harmony with the United States Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 115 S. Ct. 2097 (1995).

The requirements to complete EPA Forms 6100-2—DBE Program Subcontractor Participation Form, 6100-3—DBE Program Subcontractor Performance Form, and 6100-4—DBE Program Subcontractor Utilization Form, are intended to prevent any "bait and switch" tactics at the subcontract level by prime contractors which may circumvent the spirit of the DBE Program.

The requirements to complete the EPA DBE Certification Application (EPA Form 6100-1a) (Sole Proprietorship), the EPA DBE Certification Application (EPA Form 6100-1b) (Limited Liability Company), the EPA DBE Certification Application (EPA 6100-1c) (Partnerships), the EPA DBE Certification Application (EPA Form 6100-1d) (Corporations), the EPA DBE Certification Application (EPA Form 6100-1e) (Alaska Native Corporations), the EPA DBE Certification Application (EPA Form 6100-1f) (Tribally Owned Businesses), the EPA DBE Certification Application (EPA Form 6100-1g) (Private and Voluntary Organizations), the EPA DBE Certification Application

(EPA Form 6100-1h) (Concerns owned by Native Hawaiian Organizations), and the EPA DBE Certification Application (EPA Form 6100-1i) (Concerns Owned by Community Development Corporations), as applicable, would be required to be completed by an entity seeking to be counted as a minority business enterprise (MBE) or women's business enterprise (WBE) under EPA's DBE Program, which cannot get certified as an MBE or WBE by the SBA or DOT under their respective programs or by an Indian Tribal Government or independent private organization consistent with EPA's 8% or 10% statute as applicable.

Responses to the collection of information will be mandatory. EPA's legal authorities for the DBE Program are Public Law 102-389, a 1993 appropriations act (42 U.S.C. 4370d) (EPA's 8% statute), and Public Law 101-549, Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (EPA's 10% statute).

Other legal authorities and Executive Orders include Public Law 99-499, the Superfund Amendments and Reauthorization Act of 1986; Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988; Executive Order 12138, "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women's Business Enterprise," issued May 18, 1979; Executive Order 11625, "Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise," issued October 13, 1971; and Executive Order 12432, "Minority Business Enterprise Development," issued July 14, 1983.

EPA may make available to the public any information concerning EPA's DBE Program where the release of which is not prohibited by Federal law or regulation, including EPA's Confidential Business Information regulations at 40 CFR part 2, subpart B.

The total labor burden and costs to MBEs and WBEs for certification under State, Tribal and Insular Area funding programs is estimated to total \$8,750,300, with 168,275 burden hours and 6,731 MBE and WBE entities affected for the three-year period of the ICR. The estimated annual burden per respondent is 25 hours; the number of respondents is estimated at 2,244 at an average annual labor burden and cost per MBE and WBE of \$1300. The average annual burden and costs are estimated by spreading the first year cost over the three-year period of the

ICR, yielding a total annual average burden of 56,092 hours and \$2,916,767 in costs.

The total labor burden and costs to all EPA grant and loan recipients that would have to perform an availability analysis to meet the requirements of the proposed rule and other paperwork requirements are estimated to be \$16,509,500 with 825,475 burden hours and 3,115 entities affected for the three-year period of the ICR. The estimated annual burden hours for all responses is 275,158, and the annual number of respondents is estimated at 1,038.

The annual cost for all respondents would be \$5,503,167. The cost per respondent is estimated at \$5,250 (each respondent is estimated to perform an availability analysis once every three years) and is estimated to take 265 hours at \$20/hour. EPA assumed there were no additional start-up costs or capital expenditures.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements

under the Administrative Procedure Act (APA) or any other statute. As a grants-related rule, this rule is not subject to the notice and comment requirements of the APA, 5 U.S.C. 553(a)(1). Nor is there any other statute which requires EPA to undergo notice and comment for this rulemaking.

It is important to note that EPA's DBE Program is aimed at improving contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals, among others (e.g., Historically Black Colleges and Universities, etc.). Accordingly, EPA believes that this rule will impact a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopts the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal Mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excluded from the definition of "Federal intergovernmental mandate" duties that arise from conditions of federal assistance. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

Pursuant to section 203 of the UMRA, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. With the exemptions at the \$250,000 level or less from compliance with the fair share objective requirements, EPA believes that there would be minimal impacts on small entities, including small government jurisdictions. Additionally, under this rule, small entity recipients will be able to use appropriate State Agency-negotiated MBE/WBE objectives if such recipients solicit bids/offers from substantially the same relevant geographic market as that State Agency. Therefore, this rule does not meet the threshold test for application of section 203 of UMRA.

E. Executive Order 13132: Federalism

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

This rule does not have "federalism implications," as defined in the Executive Order. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Because this rule conditions the use of federal assistance, it will not impose substantial direct compliance costs on State and local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA

and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. Stakeholders, including representatives from State government agencies, State government organizations and local governments, were given an opportunity to comment on the proposed rule which was published in the **Federal Register** on July 24, 2003, during the 180-day comment period. Public hearings were also held in several states across the country to discuss the proposed rule and to encourage comment.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." EPA has concluded that this final rule will have tribal implications. However, it will neither impose substantial direct compliance costs nor preempt tribal law. Those implications are as follows:

Tribes receiving an EPA financial assistance agreement of more than \$250,000 for any single assistance agreement, or of more than one financial assistance agreement with a combined total of more than \$250,000 in any one fiscal year (excluding Performance Partnership Grant eligible grants to tribes and intertribal consortia under 40 CFR part 35, subpart B) will have to negotiate fair share objectives with EPA unless they choose to adopt MBE and WBE objectives of another EPA recipient consistent with the final rule. Those tribes required to negotiate fair share objectives with EPA will have a phase-in period of up to three years in which to do so; their fair share objectives will remain in effect for three fiscal years after they have been approved by EPA, unless there are significant changes to the data supporting the fair share objectives.

Some tribally owned businesses (businesses that a Federally recognized tribal government owns or in which it has a majority share) will not be eligible to be counted towards meeting the MBE/WBE fair share objectives if they do not meet the applicable SBA 8(a) criteria, e.g., see 13 CFR 124.109(b). Of course, tribes may continue to do business with tribally owned or other companies which do not meet the applicable SBA 8(a) criteria, they simply would not count such procurements

toward meeting MBE/WBE objectives. In addition, the rule will have the following impacts on tribes/tribally owned businesses:

First, a business owned by a Federally recognized tribal government would have to file an annual affidavit with EPA certifying no change in its MBE status, pursuant to § 33.210 of this rule.

Second, a business owned by a Federally recognized tribal government will have to be recertified every three years as meeting SBA's applicable 8(a) criteria to be eligible to be counted in the future towards meeting the MBE/WBE fair share objectives, pursuant to § 33.208.

Third, a business owned by a Federally recognized tribal government, if it is not already certified in accordance with SBA's applicable 8(a) criteria, may have to incur costs to be certified if there is no tribal certifier available and the other certifying entity charges for its services.

Fourth, a tribe as a recipient of EPA financial assistance will have to be notified in writing before any termination of a DBE subcontractor for convenience is made by its prime contractor, pursuant to § 33.303(a).

Fifth, consistent with other Federal and tribal laws, a tribe will have to require its prime contractor, after the tribe has unsuccessfully sought to apply Indian preference consistent with the Indian Self-Determination and Education Assistance Act, to employ the good faith efforts described in § 33.301 if a DBE subcontractor fails to complete work under a subcontract for any reason and the prime contractor solicits a replacement subcontractor, pursuant to § 33.303(b).

Sixth, consistent with other Federal and tribal Laws, a tribe will have to require its prime contractor, after it has unsuccessfully sought to apply Indian preference consistent with the Indian Self-Determination and Education Assistance Act, to employ the good faith efforts described in § 33.301 even if it has achieved its fair share objectives under subpart D of the rule, pursuant to § 33.303(c).

Seventh, a tribe will have to require its prime contractors to provide EPA Form 6100-2—DBE Program Subcontractor Participation Form, EPA Form 6100-3—DBE Program Subcontractor Performance Form and EPA Form 6100-4—DBE Program Subcontractor Utilization Form to all of its DBE subcontractors, pursuant to sections 33.303(e), (f) and (g), respectively.

Eighth, a tribal recipient that conducts procurements will have to create and maintain a bidders list in accordance

with § 33.501(b). The purpose of this list is to provide recipients as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors who seek to work on procurements under EPA financial assistance agreements. The following information must be obtained from all such prime and subcontractors: (1) Entity's name with point of contact; (2) entity's mailing address, telephone number, and e-mail address; (3) the procurement on which the entity bid or quoted, and when; and (4) entity's status as an MBE/WBE or non-MBE/WBE.

EPA consulted with tribal officials and/or representatives of tribal governments early in the process of developing this regulation to permit them to have meaningful and timely input into its development. This rule has been under development for the past several years. The meaningful and timely input of Tribal officials and/or representatives into the development of this rule is as follows:

On February 2-4, 1999, EPA invited tribal recipients of EPA grants and cooperative agreements to an EPA/State/Tribal Annual Conference in Albuquerque, New Mexico. During this conference, EPA representatives discussed a number of issues relating to the rule under development with the general audience. In addition, EPA representatives met separately with tribal officials and/or representatives to discuss issues of concern to tribes. EPA posted a staff draft of the proposed rule, dated June 19, 2000, on EPA's Internet Web site to solicit public comment. On June 27-30, 2000, the Agency held its EPA/State/Tribal Annual Conference in Albuquerque, New Mexico. Again, EPA invited tribal recipients of EPA financial assistance agreements to attend. During the June, 2000 conference, agency representatives discussed in detail the June 19, 2000 staff draft of the rule, which had been posted on EPA's Web site. EPA solicited comments on the staff draft of the rule from conference participants. Tribal officials and/or representatives attended that conference as well. As of June 30, 2001, EPA received a total of 17 written comments on the staff draft from Indian tribes.

During the development of this rule EPA representatives made a number of oral presentations to the Tribal Operations Committee (TOC) on the rule's progress and solicited input. The TOC is comprised of 19 national tribal representatives from the nine EPA Regions that have federally recognized tribes and EPA Senior Management; its role is to provide input into EPA decision making affecting Indian Country. On November 29, 2000, EPA

representatives met with the TOC at the EPA Tribal Caucus Regional Joint meeting in Miami, Florida, to discuss the staff draft rule and to obtain further tribal input into the rulemaking process.

Starting in November, 2000, EPA invited tribal recipients of EPA grants and cooperative agreements to participate in outreach sessions held in cities around the country in order to discuss the staff draft rule. EPA further solicited tribal input into the rulemaking at meetings with tribal officials/representatives at the Department of the Interior 2001 Conference on the Environment hosted by the Bureau of Indian Affairs on March 13–15, 2001, in Albuquerque, New Mexico and at the Reservation Economic Summit and American Indian Business Trade Fair (RES 2001) in Anaheim, California, on March 20, 2001. EPA further solicited tribal input in another meeting with the TOC on April 24, 2001, in Miami, Florida.

As part of its ongoing tribal coordination on this rule, EPA held meetings with tribal officials to discuss the staff draft rule in Boston, Massachusetts on April 11, 2001 and in Seattle, Washington on May 23, 2001. EPA held further coordination meetings with tribal officials to discuss a draft of this Rule in Ocean Shores, Washington during the week of January 28, 2002. On July 24, 2003, the proposed rule was published in the **Federal Register**, with a 180-day comment period. After the rule was published in the **Federal Register**, EPA held 10 tribal meetings across the country to solicit comments and suggestions on the final rule.

EPA has considered tribal concerns and written comments in the final rule. A summary of the nature of tribal concerns and EPA's response follows:

1. Applicability of the Rule to Tribes

Awards of Grants and Cooperative Agreements to tribes are currently governed by 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." These are government wide requirements that have been in effect since 1988. Among other entities subject to the regulations are governments. The definition of "Government" in 40 CFR 31.3 includes * * * a federally recognized Indian tribal government." Many requirements contained in this rule are not new but rather are the same requirements contained in 40 CFR part 31, with which many tribes already have been complying. For example, the reporting and recordkeeping requirements are already applicable to Indian tribes. In addition, neither EPA's statutory 10%

MBE/WBE procurement objective requirements for research relating to the requirements of the Clean Air Act, nor EPA's statutory 8% MBE/WBE procurement objective requirements for all other programs, exempt tribes. Therefore, tribes are not exempt from this rule, because it promotes the utilization of all disadvantaged entities in procurement under EPA financial assistance agreements, including tribally owned businesses and businesses owned by a member(s) of a tribe.

2. Trigger for Fair Share Negotiations

The issue of increasing the dollar amount of the trigger requiring compliance with the fair share objective requirements and the corresponding availability analysis was of special concern to tribes awarded General Assistance Program grants. Comments also expressed the view that availability analysis preparation requirements should apply only to tribes spending 90% or more of their grants on outside procurement. Other tribes expressed the view that preparing availability analyses is too costly for them, especially for smaller tribes.

In response to concerns raised by tribes, the trigger requiring compliance with the fair share objective requirements has been increased to \$250,000 from the \$100,000 threshold contained in an earlier draft of the rule. Also because of the nature of eligible program grants which can be included in Performance Partnership Grants (PPGs) to tribes under 40 CFR part 35, subpart B, and the unique nature of eligible recipients, the Agency is exempting PPG eligible program grants to tribes under 40 CFR part 35, subpart B from the fair share negotiation requirements.

Accordingly, only tribes receiving an EPA financial assistance agreement of more than \$250,000 for any single assistance agreement, or of more than one financial assistance agreement with a combined total of more than \$250,000 in any one fiscal year (excluding PPG eligible program grants under 40 CFR part 35, subpart B), will have to comply with the fair share objective requirements.

The Agency believes that this change effectively addresses the concerns by setting a uniform standard applicable to all recipients, including tribes, rather than, for example, setting a standard based on amounts spent by tribes on outside procurement, which could pose implementation difficulties. EPA believes that most tribes will not have to comply with the fair share objective requirements under the final rule because they will fall under the

\$250,000 exemption or the exemption for PPG eligible program grants under 40 CFR part 35, subpart B. Finally, EPA believes that a number of tribes which otherwise would have to negotiate fair share objectives may elect instead to apply the objectives of another recipient in accordance with the requirements of the rule. The rule will also provide tribes with a three-year phase-in period to comply with the fair share negotiation requirement.

3. Reporting and Recordkeeping Requirements

Some tribes expressed concerns that keeping records of and reporting purchases for EPA funded grants would impose a heavy burden on tribal governments. Instead, they suggested basing reporting on the amount of money the tribe received rather than on the amount of money it spent on outside supplies and services.

EPA considered these concerns and concluded that 40 CFR part 31 already requires tribes to comply with part 31's recordkeeping and reporting requirements, which included MBE/WBE recordkeeping and reporting. The Agency believes that basing requirements on amounts received rather than on amounts spent would be an inaccurate measurement of MBE/WBE procurement utilization. EPA currently requires financial assistance recipients to report MBE/WBE accomplishments based on dollars spent on MBE/WBE procurements. Therefore, EPA is not adopting the suggested change. However, because of comments received requesting a reduction in the burden created by quarterly reporting, EPA has reduced the reporting requirement to semi-annually for recipients who currently report on a quarterly basis. Recipients who currently report annually will continue to do so.

4. Compliance With the Good Faith Efforts Requirements

One comment objected to having to advertise in newspapers; a comment was also made that EPA should investigate alternative mechanisms that encourage a tribe to seek out MBEs/WBEs during the procurement process without incurring an unreasonable financial burden.

Section 7(b) of the Indian Self-Determination and Education Assistance Act requires tribal governments to solicit tribally-owned businesses and/or businesses owned by a member(s) of a tribe, before undertaking the six good faith efforts. Tribes are currently subject to 40 CFR part 31, which requires them to make

good faith efforts to ensure that DBEs are used whenever possible. EPA is changing this requirement. EPA does not believe that the good faith effort requirements are unduly burdensome.

5. Phase-In Period

One comment expressed a concern about the timing of the phase-in period and the maximum amount of time needed for the requirement to be implemented.

EPA believes that the three-year phase-in period, which begins after the final rule's effective date, allows tribes sufficient time to prepare for and comply with the requirements of the rule.

As required by section 7(a), EPA's Tribal Consultation Official has certified that the requirements of the Executive Order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns any environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the

supply, distribution, or use of energy. EPA has concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

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

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 27, 2008.

List of Subjects

40 CFR Part 30

Environmental protection, Administrative practice and procedure, Grant programs—environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 31

Accounting, Administrative practice and procedure, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 33

Grant programs—environmental protection.

40 CFR Part 35

Grant programs—environmental protection, Grant programs—Indians, Hazardous waste, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 40

Research and Demonstration Grants—Projects involving construction.

Dated: March 18, 2008.

Stephen L. Johnson,
Administrator.

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

PART 30—[AMENDED]

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*; 15 U.S.C. 2601 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 241, 242(b), 243, 246, 300f, 300j-1, 300j-2, 300j-3; 1857 *et seq.*; 6901 *et seq.*, 7401 *et seq.*; OMB circular A-110 (64 FR 54926, October 8, 1999).

§ 30.44 [Amended]

■ 2. Section 30.44 is amended by removing and reserving paragraph (b).

PART 31—[AMENDED]

■ 3. The authority citation for part 31 continues to read as follows:

Authority: 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C.

1251 *et seq.* and 1401 *et seq.*; 42 U.S.C. 300f *et seq.*, 6901 *et seq.*, 7401 *et seq.*, and 9601 *et seq.*

§ 31.36 [Amended]

■ 4. Section 31.36 is amended by removing and reserving paragraph (e).

PART 33—[ADDED]

■ 5. Part 33 is added as follows:

PART 33—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROGRAMS

Subpart A—General Provisions

Sec.

- 33.101 What are the objectives of this part?
 33.102 When do the requirements of this part apply?
 33.103 What do the terms in this part mean?
 33.104 May a recipient apply for a waiver from the requirements of this part?
 33.105 What are the compliance and enforcement provisions of this part?
 33.106 What assurances must EPA financial assistance recipients obtain from their contractors?
 33.107 What are the rules governing availability of records, cooperation, and intimidation and retaliation?

Subpart B—Certification

- 33.201 What does this subpart require?
 33.202 How does an entity qualify as an MBE or WBE under EPA's 8% statute?
 33.203 How does an entity qualify as an MBE or WBE under EPA's 10% statute?
 33.204 Where does an entity become certified under EPA's 8% and 10% statutes?
 33.205 How does an entity become certified by EPA?
 33.206 Is there a list of certified MBEs and WBEs?
 33.207 Can an entity reapply to EPA for MBE or WBE certification?
 33.208 How long does an MBE or WBE certification from EPA last?
 33.209 Can EPA re-evaluate the MBE or WBE status of an entity after EPA certifies it to be an MBE or WBE?
 33.210 Does an entity certified as an MBE or WBE by EPA need to keep EPA informed of any changes which may affect the entity's certification?
 33.211 What is the process for appealing or challenging an EPA MBE or WBE certification determination?
 33.212 What conduct is prohibited by this subpart?

Subpart C—Good Faith Efforts

- 33.301 What does this subpart require?
 33.302 Are there any additional contract administration requirements?
 33.303 Are there special rules for loans under EPA financial assistance agreements?
 33.304 Must a Native American (either as an individual, organization, Tribe or

Tribal Government) recipient or prime contractor follow the six good faith efforts?

Subpart D—Fair Share Objectives

- 33.401 What does this subpart require?
 33.402 Are there special rules for loans under EPA financial assistance agreements?
 33.403 What is a fair share objective?
 33.404 When must a recipient negotiate fair share objectives with EPA?
 33.405 How does a recipient determine its fair share objectives?
 33.406 May a recipient designate a lead agency for fair share objective negotiation purposes?
 33.407 How long do MBE and WBE fair share objectives remain in effect?
 33.408 May a recipient use race and/or gender conscious measures as part of this program?
 33.409 May a recipient use quotas as part of this program?
 33.410 Can a recipient be penalized for failing to meet its fair share objectives?
 33.411 Who may be exempted from this subpart?
 33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share objectives?

Subpart E—Recordkeeping and Reporting

- 33.501 What are the recordkeeping requirements of this part?
 33.502 What are the reporting requirements of this part?
 33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?

Appendix A to Part 33—Terms and Conditions

Authority: 15 U.S.C. 637 note; 42 U.S.C. 4370d, 7601 note, 9605(f); E.O. 11625, 36 FR 19967, 3 CFR, 1971 Comp., p. 213; E.O. 12138, 49 FR 29637, 3 CFR, 1979 Comp., p. 393; E.O. 12432, 48 FR 32551, 3 CFR, 1983 Comp., p. 198.

Subpart A—General Provisions

§ 33.101 What are the objectives of this part?

The objectives of this part are:
 (a) To ensure nondiscrimination in the award of contracts under EPA financial assistance agreements. To that end, implementation of this rule with respect to grantees, sub-grantees, loan recipients, prime contractors, or subcontractors in particular States or locales—notably those where there is no apparent history of relevant discrimination—must comply with equal protection standards at that level, apart from the EPA DBE Rule's constitutional compliance as a national matter;
 (b) To harmonize EPA's DBE Program objectives with the U.S. Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995);

(c) To help remove barriers to the participation of DBEs in the award of contracts under EPA financial assistance agreements; and

(d) To provide appropriate flexibility to recipients of EPA financial assistance in establishing and providing contracting opportunities for DBEs.

§ 33.102 When do the requirements of this part apply?

The requirements of this part apply to procurement under EPA financial assistance agreements performed entirely within the United States, whether by a recipient or its prime contractor, for construction, equipment, services and supplies.

§ 33.103 What do the terms in this part mean?

Terms not defined below shall have the meaning given to them in 40 CFR part 30, part 31 and part 35 as applicable. As used in this part:

Availability analysis means documentation of the availability of MBEs and WBEs in the relevant geographic market in relation to the total number of firms available in that area.

Award official means the EPA Regional or Headquarters official delegated the authority to execute financial assistance agreements on behalf of EPA.

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor.

Construction means erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.

Disabled American means, with respect to an individual, permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

Disadvantaged business enterprise (DBE) means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

Disparity study means a comparison within the preceding ten years of the available MBEs and WBEs in a relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services and supplies.

Equipment means items procured under a financial assistance agreement as defined by applicable regulations (for example 40 CFR 30.2 and 40 CFR 31.3) for the particular type of financial assistance received.

Fair share objective means an objective expressing the percentage of MBE or WBE utilization expected absent the effects of discrimination.

Financial assistance agreement means grants or cooperative agreements awarded by EPA. The term includes grants or cooperative agreements used to capitalize revolving loan funds, including, but not limited to, the Clean Water State Revolving Loan Fund (CWSRF) Program under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381 *et seq.*, the Drinking Water State Revolving Fund (DWSRF) Program under section 1452 of the Safe Drinking Water Act, 42 U.S.C. 300j-12, and the Brownfields Cleanup Revolving Loan Fund (BCRLF) Program under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604.

Good faith efforts means the race and/or gender neutral measures described in subpart C of this part.

Historically black college or university (HBCU) means an institution determined by the Secretary of Education to meet the requirements of 34 CFR part 608.

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified metropolitan counties, or lands within the external boundaries of an Indian reservation.

HUBZone small business concern means a small business concern that

appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Identified loan means a loan project or set-aside activity receiving assistance from a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, which:

(1) In the case of the CWSRF Program, is a project funded from amounts equal to the capitalization grant;

(2) In the case of the DWSRF Program, is a loan project or set-aside activity funded from amounts up to the amount of the capitalization grant; or

(3) In the case of the BCRLF Program, is a project that has been funded with EPA financial assistance.

Insular area means the Commonwealth of Puerto Rico or any territory or possession of the United States.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Labor surplus area firm (LSAF) means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

Minority business enterprise (MBE) means a Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women's Business Enterprise (WBE).

Minority institution means an accredited college or university whose enrollment of a single designated group or a combination of designated groups (as defined by the Small Business Administration regulations at 13 CFR part 124) exceeds 50% of the total enrollment.

Native American means any individual who is an American Indian, Eskimo, Aleut, or Native Hawaiian.

Recipient means an entity that receives an EPA financial assistance

agreement or is a sub-recipient of such agreement, including loan recipients under the Clean Water State Revolving Fund Program, Drinking Water State Revolving Fund Program, and the Brownfields Cleanup Revolving Loan Fund Program.

Services means a contractor's labor, time or efforts provided in a manner consistent with normal business practices which do not involve the delivery of a specific end item, other than documents (*e.g.*, reports, design drawings, specifications).

Small business, small business concern or small business enterprise (SBE) means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

Small business in a rural area (SBRA) means a small business operating in an area identified as a rural county with a code 6-9 in the Rural-Urban continuum Classification Code developed by the United States Department of Agriculture in 1980.

Supplies means items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.

United States means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico and any other territories and possessions of the United States.

Women's business enterprise (WBE) means a business concern which is at least 51% owned or controlled by women for purposes of EPA's 8% statute or a business concern which is at least 51% owned and controlled by women for purposes for EPA's 10% statute. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50 percent interest in her share. Similarly, a business concern which is more than 50 percent owned by a married man will not become a qualified WBE by virtue of his wife's 50 percent interest in his share.

§ 33.104 May recipients apply for a waiver from the requirements of this part?

(a) A recipient may apply for a waiver from any of the requirements of this part that are not specifically based on a statute or Executive Order, by submitting a written request to the Director of the Office of Small and Disadvantaged Business Utilization.

(b) The request must document special or exceptional circumstances that make compliance with the

requirement impractical, including a specific proposal addressing how the recipient intends to achieve the objectives of this part as described in § 33.101. The request must show that:

(1) There is a reasonable basis to conclude that the recipient could achieve a level of MBE and WBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subparts C or D of this part;

(2) Conditions in the recipient's jurisdiction are appropriate for implementing the request; and

(3) The request is consistent with applicable law.

(c) The OSDDBU Director has the authority to approve a recipient's request. If the OSDDBU Director grants a recipient's request, the recipient may administer its program as provided in the request, subject to the following conditions:

(1) The recipient's level of MBE and WBE participation continues to be consistent with the objectives of this part;

(2) There is a reasonable limitation on the duration of the recipient's modified program; and

(3) Any other conditions the OSDDBU Director makes on the grant of the waiver.

(d) The OSDDBU Director may end a program waiver at any time upon notice to the recipient and require a recipient to comply with the provisions of this part. The OSDDBU Director may also extend the waiver if he or she determines that all requirements of paragraphs (b) and (c) of this section continue to be met. Any such extension shall be for no longer than the period originally set for the duration of the program waiver.

§ 33.105 What are the compliance and enforcement provisions of this part?

If a recipient fails to comply with any of the requirements of this part, EPA may take remedial action under 40 CFR parts 30, 31 or 35, as appropriate, or any other action authorized by law, including, but not limited to, enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*). Examples of the remedial actions under 40 CFR parts 30, 31, and 35 include, but are not limited to:

(a) Temporarily withholding cash payments pending correction of the deficiency by the recipient or more severe enforcement action by EPA;

(b) Disallowing all or part of the cost of the activity or action not in compliance;

(c) Wholly or partly suspending or terminating the current award; or

(d) Withholding further awards for the project or program.

§ 33.106 What assurances must EPA financial assistance recipients obtain from their contractors?

The recipient must ensure that each procurement contract it awards contains the term and condition specified in Appendix A to this part concerning compliance with the requirements of this part. The recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.107 What are the rules governing availability of records, cooperation, and intimidation and retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of EPA's DBE Program, EPA complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). EPA may make available to the public any information concerning EPA's DBE Program release of which is not prohibited by Federal law or regulation, including EPA's Confidential Business Information regulations at 40 CFR part 2, subpart B.

(2) EPA recipients shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal, state, and local law.

(b) *Cooperation.* All participants in EPA's DBE Program are required to cooperate fully and promptly with EPA, EPA Private Certifiers and EPA recipients in reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved in accordance with § 33.105.

(c) *Intimidation and retaliation.* A recipient, contractor, or any other participant in EPA's DBE Program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part. Violation of this prohibition shall be a ground for appropriate action against the party involved in accordance with § 33.105.

Subpart B—Certification

§ 33.201 What does this subpart require?

(a) In order to qualify and participate as an MBE or WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity must be

properly certified as required by this subpart.

(b) EPA's DBE Program is primarily based on two statutes. Public Law 102-389, 42 U.S.C. 4370d, provides for an 8% objective for awarding contracts under EPA financial assistance agreements to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals, including HBCUs and women ("EPA's 8% statute"). Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note, provides for a 10% objective for awarding contracts under EPA financial assistance agreements for research relating to such amendments to business concerns or other organizations owned and controlled by socially and economically disadvantaged individuals ("EPA's 10% statute").

§ 33.202 How does an entity qualify as an MBE or WBE under EPA's 8% statute?

To qualify as an MBE or WBE under EPA's 8% statute, an entity must establish that it is owned or controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. An entity need not demonstrate potential for success.

(a) *Ownership or control.* "Ownership" and "control" shall have the same meanings as set forth in 13 CFR 124.105 and 13 CFR 124.106, respectively. (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(b) *Socially disadvantaged individual.* A socially disadvantaged individual is a person who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of section 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5); 13 CFR 124.103; see also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(c) *Economically disadvantaged individual.* An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by section 8(a)(6) of the

Small Business Act (15 U.S.C. 637(a)(6)) and its implementing regulations (13 CFR 124.104). (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations). Under EPA's DBE Program, an individual claiming disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

(d) *HBCU*. An HBCU automatically qualifies as an entity owned or controlled by socially and economically disadvantaged individuals.

(e) *Women*. Women are deemed to be socially and economically disadvantaged individuals. Ownership or control must be demonstrated pursuant to paragraph (a) of this section, which may be accomplished by certification under § 33.204.

§ 33.203 How does an entity qualify as an MBE or WBE under EPA's 10% statute?

To qualify as an MBE or WBE under EPA's 10% statute, an entity must establish that it is owned and controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States.

(a) *Ownership and control*. An entity must be at least 51% owned by a socially and economically disadvantaged individual, or in the case of a publicly traded company, at least 51% of the stock must be owned by one or more socially and economically disadvantaged individuals, and the management and daily business operations of the business concern must be controlled by such individuals. (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(b) *Socially disadvantaged individual*. A socially disadvantaged individual is a person who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of section 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5); 13 CFR 124.103; see also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(c) *Economically disadvantaged individual*. An economically disadvantaged individual is a socially disadvantaged individual whose ability

to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) and its implementing regulations (13 CFR 124.104). (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations). Under EPA's DBE Program, an individual claiming disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

(d) *Presumptions*. In accordance with Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note, Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women and Disabled Americans are presumed to be socially and economically disadvantaged individuals. In addition, the following institutions are presumed to be entities owned and controlled by socially and economically disadvantaged individuals: HBCUs, Minority Institutions (including Tribal Colleges and Universities and Hispanic-Serving Institutions) and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

(e) *Individuals not members of designated groups*. Nothing in this section shall prohibit any member of a racial or ethnic group that is not designated as socially and economically disadvantaged under paragraph (d) of this section from establishing that they have been impeded in developing a business concern as a result of racial or ethnic discrimination.

(f) *Rebuttal of presumptions*. The presumptions established by paragraph (d) of this section may be rebutted in accordance with § 33.209 with respect to a particular entity if it is reasonably established that the individual at issue is not experiencing impediments to developing such entity as a result of the individual's identification as a member of a specified group.

(g) *Joint ventures*.

(1) A joint venture may be considered owned and controlled by socially and economically disadvantaged individuals, notwithstanding the size of such joint venture, if a party to the joint venture is an entity that is owned and controlled by a socially and economically disadvantaged individual, and that entity owns 51% of the joint venture.

(2) As a party to a joint venture, a person who is not an economically disadvantaged individual, or an entity that is not owned and controlled by a socially and economically disadvantaged individual, may not be a party to more than two awarded contracts in a fiscal year solely by joint venture with a socially and economically disadvantaged individual or entity.

§ 33.204 Where does an entity become certified under EPA's 8% and 10% statutes?

(a) In order to participate as an MBE or WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity must first attempt to be certified by the following:

(1) The United States Small Business Administration (SBA), under its 8(a) Business Development Program (13 CFR part 124, subpart A) or its Small Disadvantaged Business (SDB) Program, (13 CFR part 124, subpart B);

(2) The United States Department of Transportation (DOT), under its regulations for Participation by Disadvantaged Business Enterprises in DOT Programs (49 CFR parts 23 and 26); or

(3) an Indian Tribal Government, State Government, local Government or independent private organization in accordance with EPA's 8% or 10% statute as applicable.

(2) Such certifications shall be considered acceptable for establishing MBE or WBE status, as appropriate, under EPA's DBE Program as long as the certification meets EPA's U.S. citizenship requirement under § 33.202 or § 33.203.

(3) An entity may only apply to EPA for MBE or WBE certification under the procedures set forth in § 33.205 if that entity first is unable to obtain MBE or WBE certification under paragraphs (a) (1) through (3) of this section.

(b) [Reserved].

§ 33.205 How does an entity become certified by EPA?

(a) *Filing an application*. In accordance with § 33.204, an entity may apply to EPA's Office of Small and Disadvantaged Business Utilization (EPA OSDBU) for certification as an MBE or WBE. EPA's Regional Offices will provide further information and required application forms to any entity interested in MBE or WBE certification. The applicant must attest to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the

form of an unsworn declaration executed under penalty of perjury of the laws of the United States. The application must include evidence demonstrating that the entity is owned or controlled by one or more individuals claiming disadvantaged status under EPA's 8% statute or owned and controlled by one or more individuals claiming disadvantaged status under EPA's 10% statute, along with certifications or narratives regarding the disadvantaged status of such individuals. In addition, the application must include documentation of a denial of certification by a Federal agency, State government, local government, Indian Tribal government, or independent private organization, if applicable.

(b) *Application processing.* EPA OSDDBU will advise each applicant within 15 days, whenever practicable, after receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. EPA OSDDBU shall make its certification decision within 30 days of receipt of a complete and suitable application package, whenever practicable. The burden is on the applicant to demonstrate that those individuals claiming disadvantaged status own or control the entity under EPA's 8% statute or own and control the entity under EPA's 10% statute.

(c) *Ownership and/or control determination.* EPA OSDDBU first will determine whether those individuals claiming disadvantaged status own or control the applicant entity under EPA's 8% statute or own and control the applicant entity under EPA's 10% statute. If EPA OSDDBU determines that the applicant does not meet the ownership and/or control requirements of this subpart, EPA OSDDBU will issue a written decision to the entity rejecting the application and set forth the reasons for disapproval.

(d) *Disadvantaged determination.* Once EPA OSDDBU determines whether an applicant meets the ownership and/or control requirements of this subpart, EPA OSDDBU will determine whether the applicable disadvantaged status requirements under EPA's 8% or 10% statute have been met. If EPA OSDDBU determines that the applicable disadvantaged status requirements have been met, EPA OSDDBU shall notify the applicant that it has been certified and place the MBE or WBE on EPA OSDDBU's list of qualified MBEs and WBEs. If EPA OSDDBU determines that the applicable disadvantaged status requirements have not been met, EPA OSDDBU will reject the entity's

application for certification. EPA OSDDBU will issue a written decision to the entity setting forth EPA OSDDBU's reasons for disapproval.

(e) *Evaluation standards.* (1) An entity's eligibility shall be evaluated on the basis of present circumstances. An entity shall not be denied certification based solely on historical information indicating a lack of ownership and/or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the entity currently meets the ownership and/or control standards of this subpart.

(2) Entities seeking MBE or WBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial of certification.

(3) In making its certification determination, EPA OSDDBU may consider whether an entity has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE Program.

(4) EPA OSDDBU shall not consider the issue of whether an entity performs a commercially useful function in making its certification determination. Consideration of whether an entity performs a commercially useful function or is a regular dealer pertains solely to counting toward MBE and WBE objectives as provided in subpart E of this part.

(5) Information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information will be safeguarded from disclosure to unauthorized persons, consistent with applicable Federal, State, and local law.

(6) To assist in making EPA OSDDBU's certification determination, EPA OSDDBU itself may take the following steps:

(i) Perform an on-site visit to the offices of the entity. Interview the principal officers of the entity and review their resumes and/or work histories. Perform an on-site visit to local job sites if there are such sites on which the entity is working at the time of the certification investigation. Already existing site visit reports may be relied upon in making the certification;

(ii) If the entity is a corporation, analyze the ownership of stock in the entity;

(iii) Analyze the bonding and financial capacity of the entity;

(iv) Determine the work history of the entity, including contracts it has received and work it has completed;

(v) Obtain a statement from the entity of the type of work it prefers to perform for EPA recipients under the DBE Program and its preferred locations for performing the work, if any; and

(vi) Obtain or compile a list of the equipment owned by or available to the entity and the licenses the entity and its key personnel possess to perform the work it seeks to do for EPA recipients under the DBE Program.

§ 33.206 Is there a list of certified MBEs and WBEs?

EPA OSDDBU will maintain a list of certified MBEs and WBEs on EPA OSDDBU's Home Page on the Internet. Any interested person may also obtain a copy of the list from EPA OSDDBU.

§ 33.207 Can an entity reapply to EPA for MBE or WBE certification?

An entity which has been denied MBE or WBE certification may reapply for certification at any time 12 months or more after the date of the most recent determination by EPA OSDDBU to decline the application.

§ 33.208 How long does an MBE or WBE certification from EPA last?

Once EPA OSDDBU certifies an entity to be an MBE or WBE by placing it on the EPA OSDDBU list of certified MBEs and WBEs specified in § 33.206, the entity will generally remain on the list for a period of three years from the date of its certification. To remain on the list after three years, an entity must submit a new application and receive a new certification.

§ 33.209 Can EPA re-evaluate the MBE or WBE status of an entity after EPA certifies it to be an MBE or WBE?

(a) EPA OSDDBU may initiate a certification determination whenever it receives credible information calling into question an entity's eligibility as an MBE or WBE. Upon its completion of a certification determination, EPA OSDDBU will issue a written determination regarding the MBE or WBE status of the questioned entity.

(b) If EPA OSDDBU finds that the entity does not qualify as an MBE or WBE, EPA OSDDBU will decertify the entity as an MBE or WBE, and immediately remove the entity from the EPA OSDDBU list of certified MBEs and WBEs.

(c) If EPA OSDDBU finds that the entity continues to qualify as an MBE or WBE, the determination remains in effect for three years from the date of the decision under the same conditions as if the entity had been granted MBE or WBE certification under § 33.205.

§ 33.210 Does an entity certified as an MBE or WBE by EPA need to keep EPA informed of any changes which may affect the entity's certification?

(a) An entity certified as an MBE or WBE by EPA OSDBU must provide EPA OSDBU, every year on the anniversary of the date of its certification, an affidavit sworn to by the entity's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the entity's circumstances affecting its ability to meet disadvantaged status, ownership, and/or control requirements of this subpart or any material changes in the information provided in its application form. Failure to comply may result in the loss of MBE or WBE certification under EPA's DBE Program.

(b) An entity certified as an MBE or WBE by EPA OSDBU must inform EPA OSDBU in writing of any change in circumstance affecting the MBE's or WBE's ability to meet disadvantaged status, ownership, and/or control requirements of this subpart or any material change in the information provided in its application form. The MBE or WBE must attach supporting documentation describing in detail the nature of such change. The notice from the MBE or WBE must take the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The MBE or WBE must provide the written notification within 30 calendar days of the occurrence of the change.

§ 33.211 What is the process for appealing or challenging an EPA MBE or WBE certification determination?

(a) An entity which has been denied MBE or WBE certification by EPA OSDBU under § 33.205 or § 33.209 may appeal that denial. A third party may challenge EPA OSDBU's determination to certify an entity as an MBE or WBE under § 33.205 or § 33.209.

(b) Appeals and challenges must be sent to the Director of OSDBU at Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 1230T, Washington, DC 20460.

(c) The appeal or challenge must be sent to the Director of OSDBU (Director) within 90 days of the date of EPA OSDBU's MBE or WBE certification determination. The Director may accept an appeal or challenge filed later than 90 days after the date of EPA OSDBU's MBE or WBE certification determination

if the Director determines that there was good cause, beyond the control of the appellant or challenger, for the late filing of the appeal or challenge.

(d) No specific format is required for an appeal or challenge. However, the appeal or challenge must include information and arguments concerning why EPA OSDBU's MBE or WBE certification determination should be reversed. For challenges in which a third party questions EPA OSDBU's determination to certify an entity as an MBE or WBE under § 33.205 or § 33.209, the third party must also send a copy of the challenge to the entity whose MBE or WBE certification is being questioned. In addition, the Director shall request information and arguments from that entity as to why EPA OSDBU's determination to certify the entity as an MBE or WBE should be upheld.

(e) The Director makes his/her appeal or challenge decision based solely on the administrative record and does not conduct a hearing. The Director may supplement the record by adding relevant information made available by any other source, including the EPA Office of Inspector General; Federal, State, or local law enforcement authorities; an EPA recipient; or a private party.

(f) Consistent with Federal law, the Director shall make available, upon the request of the appellant, challenger or the entity affected by the Director's appeal or challenge decision, any supplementary information the Director receives from any source as described in paragraph (e) of this section.

(g) Pending the Director's appeal or challenge decision, EPA OSDBU's MBE or WBE certification determination remains in effect. The Director does not stay the effect of its MBE or WBE certification determination while he/she is considering an appeal or challenge.

(h) The Director shall reverse EPA OSDBU's MBE or WBE certification determination only if there was a clear and significant error in the processing of the certification or if EPA OSDBU failed to consider a significant material fact contained within the entity's application for MBE or WBE certification.

(i) All decisions under this section are administratively final.

§ 33.212 What conduct is prohibited by this subpart?

An entity that does not meet the eligibility criteria of this subpart may not attempt to participate as an MBE or WBE in contracts awarded under EPA financial assistance agreements or be counted as such by an EPA recipient. An entity that submits false, fraudulent,

or deceitful statements or representations, or indicates a serious lack of business integrity or honesty, may be subject to sanctions under § 33.105.

Subpart C—Good Faith Efforts

§ 33.301 What does this subpart require?

A recipient, including one exempted from applying the fair share objective requirements by § 33.411, is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share objectives under subpart D of this part:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

§ 33.302 Are there any additional contract administration requirements?

(a) A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.

(b) A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

(c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor.

(d) A recipient must require its prime contractor to employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of this part.

(e) A recipient must require its prime contractor to provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100-2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of EPA Form 6100-2 directly to the appropriate EPA DBE Coordinator.

(f) A recipient must require its prime contractor to have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form. A recipient must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package.

(g) A recipient must require its prime contractor to complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package.

(h) Copies of EPA Form 6100-2—DBE Program Subcontractor Participation Form, EPA Form 6100-3—DBE Program Subcontractor Performance Form and EPA Form 6100-4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDDBU's Home Page on the Internet or directly from EPA OSDDBU.

(i) A recipient must ensure that each procurement contract it awards contains the term and condition specified in the Appendix concerning compliance with the requirements of this part. A recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.303 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, such as a State under the CWSRF or DWSRF or an eligible entity under the Brownfields Cleanup Revolving Loan Fund program, must require that borrowers receiving identified loans comply with the good faith efforts described in § 33.301 and the contract administration requirements of § 33.302. This provision does not require that such private and nonprofit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 40 CFR part 30, part 31, or part 35, subpart O, as applicable.

§ 33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

(a) A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e), which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.

(b) Tribal organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. Tribal governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. All tribal recipients still must retain records documenting compliance in accordance with § 33.501 and must report to EPA on their accomplishments in accordance with § 33.502.

(c) Any recipient, whether or not Native American, of an EPA financial

assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.

(d) Native Americans are defined in § 33.103 to include American Indians, Eskimos, Aleuts and Native Hawaiians.

Subpart D—Fair Share Objectives

§ 33.401 What does this subpart require?

A recipient must negotiate with the appropriate EPA award official or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

§ 33.402 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize revolving loan funds must either apply its own fair share objectives negotiated with EPA under § 33.401 to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with entities receiving identified loans, as long as such separate objectives are based on demonstrable evidence of availability of MBEs and WBEs in accordance with this subpart. If procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

§ 33.403 What is a fair share objective?

A fair share objective is an objective based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services and supplies compared to the number of all qualified entities in the same market for the same procurement categories, adjusted, as appropriate, to reflect the level of MBE and WBE participation expected absent the effects of discrimination. A fair share objective is not a quota.

§ 33.404 When must a recipient negotiate fair share objectives with EPA?

A recipient must submit its proposed MBE and WBE fair share objectives and supporting documentation to EPA within 120 days after its acceptance of its financial assistance award. EPA must respond in writing to the recipient's submission within 30 days of receipt, either agreeing with the submission or providing initial comments for further negotiation. Failure to respond within this time frame may be considered as agreement by EPA with the fair share objectives submitted by the recipient. MBE and WBE fair share objectives must be agreed upon by the recipient and EPA before funds may be expended for procurement under the recipient's financial assistance agreement.

§ 33.405 How does a recipient determine its fair share objectives?

(a) A recipient must determine its fair share objectives based on demonstrable evidence of the number of certified MBEs and WBEs that are ready, willing, and able to perform in the relevant geographic market for each of the four procurement categories (equipment, construction, services, and supplies). The relevant geographic market is the area of solicitation for the procurement as determined by the recipient. The market may be a geographic region of a State, an entire State, or a multi-State area. Fair share objectives must reflect the recipient's determination of the level of MBE and WBE participation it would expect absent the effects of discrimination. A recipient may combine the four procurement categories into one weighted objective for MBEs and one weighted objective for WBEs.

(b) *Step 1.* A recipient must first determine a base figure for the relative availability of MBEs and WBEs. The following are examples of approaches that a recipient may take. Any percentage figure derived from one of these examples should be considered a basis from which a recipient begins when examining evidence available in its jurisdiction.

(1) *MBE and WBE Directories and Census Bureau Data.* Separately determine the number of certified MBEs and WBEs that are ready, willing, and able to perform in the relevant geographic market for each procurement category from a MBE/WBE directory, such as a bidder's list. Using the Census Bureau's County Business Pattern (CBP) database, determine the number of all qualified businesses available in the market that perform work in the same procurement category. Separately divide the number of MBEs and WBEs by the

number of all businesses to derive a base figure for the relative availability of MBEs and WBEs in the market.

(2) *Data from a Disparity Study.* Use a percentage figure derived from data in a valid, applicable disparity study conducted within the preceding ten years comparing the available MBEs and WBEs in the relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services, and supplies.

(3) *The Objective of Another EPA Recipient.* A recipient may use, as its base figure, the fair share objectives of another EPA recipient if the recipient demonstrates that it will use the same, or substantially similar, relevant geographic market as the other EPA recipient. (See § 33.411 for exemptions from fair share objective negotiations).

(4) *Alternative Methods.* Subject to EPA approval, other methods may be used to determine a base figure for the overall objective. Any methodology chosen must be based on demonstrable evidence of local market conditions and be designed to ultimately attain an objective that is rationally related to the relative availability of MBEs and WBEs in the relevant geographic market.

(c) *Step 2.* After calculating a base figure, a recipient must examine the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the fair share objective.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of MBEs and WBEs to perform contract work under EPA financial assistance agreements, as measured by the volume of work MBEs and WBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within the recipient's jurisdiction, to the extent it is not already accounted for in the base figure; and

(iii) If the base figure is the objective of another EPA recipient, it must be adjusted for differences in the local market and the recipient's contracting program.

(2) A recipient may also consider available evidence from related fields that affect the opportunities for MBEs and WBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of MBEs and WBEs to get the financing, bonding and insurance required to participate; and

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the

extent it can be related to the opportunities for MBEs and WBEs to perform in the program.

(3) If a recipient attempts to make an adjustment to its base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of another ongoing MBE/WBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

§ 33.406 May a recipient designate a lead agency for fair share objective negotiation purposes?

If an Indian Tribal, State or local Government has more than one agency that receives EPA financial assistance, the agencies within that Government may designate a lead agency to negotiate MBE and WBE fair share objectives with EPA to be used by each of the agencies. Each agency must otherwise negotiate with EPA separately its own MBE and WBE fair share objectives.

§ 33.407 How long do MBE and WBE fair share objectives remain in effect?

Once MBE and WBE fair share objectives have been negotiated, they will remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The fact that a disparity study utilized in negotiating fair share objectives has become more than ten years old during the three-year period does not by itself constitute a significant change requiring renegotiation.

§ 33.408 May a recipient use race and/or gender conscious measures as part of this program?

(a) Should the good faith efforts described in subpart C of this part or other race and/or gender neutral measures prove to be inadequate to achieve an established fair share objective, race and/or gender conscious action (e.g., apply the subcontracting suggestion in § 33.301(c) to MBEs and WBEs) is available to a recipient and its prime contractor to more closely achieve the fair share objectives, subject to § 33.409. Under no circumstances are race and/or gender conscious actions required by EPA.

(b) Any use of race and/or gender conscious efforts must not result in the selection of an unqualified MBE or WBE.

§ 33.409 May a recipient use quotas as part of this program?

A recipient is not permitted to use quotas in procurements under EPA's 8% or 10% statute.

§ 33.410 Can a recipient be penalized for failing to meet its fair share objectives?

A recipient cannot be penalized, or treated by EPA as being in noncompliance with this subpart, solely because its MBE or WBE participation does not meet its applicable fair share objective. However, EPA may take remedial action under § 33.105 for a recipient's failure to comply with other provisions of this part, including, but not limited to, the good faith efforts requirements described in subpart C of this part.

§ 33.411 Who may be exempted from this subpart?

(a) *General.* A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is not required to apply the fair share objective requirements of this subpart. This exemption is limited to the fair share objective requirements of this subpart.

(b) *Clean Water State Revolving Fund (CWSRF) Program, Drinking Water State Revolving Fund (DWSRF) Program, and Brownfields Cleanup Revolving Loan Fund (BCRLF) Program Identified Loan Recipients.* A recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the fair share objective requirements of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the fair share objective requirements of this subpart.

(c) *Tribal and Intertribal Consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B.* Tribal and Intertribal consortia recipients of PPG eligible grants are not required to apply the fair share objective requirements of this subpart to those grants. This exemption is limited to the fair share objective requirements of this subpart.

(d) *Technical Assistance Grant (TAG) Program Recipients.* A recipient of a TAG is not required to apply the fair share objective requirements of this subpart to that grant. This exemption is limited to the fair share objective requirements of this subpart.

§ 33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share objectives?

The requirements in this subpart regarding the negotiation of fair share

objectives will not apply to an Insular Area or Indian Tribal Government recipient until three calendar years after the effective date of this part.

Furthermore, in accordance with § 33.411(c), tribal and intertribal consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR part 35, subpart B are not required to apply the fair share objective requirements of this subpart to such grants.

Subpart E—Recordkeeping and Reporting**§ 33.501 What are the recordkeeping requirements of this part?**

(a) A recipient, including those recipients exempted under § 33.411 from the requirement to apply the fair share objectives, must maintain all records documenting its compliance with the requirements of this part, including documentation of its, and its prime contractors', good faith efforts and data relied upon in formulating its fair share objectives. Such records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement.

(b) A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. (See *e.g.*, § 33.303). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. The bidders list must only be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and e-mail address;

(3) The procurement on which the entity bid or quoted, and when; and
(4) Entity's status as an MBE/WBE or non-MBE/WBE.

(c) *Exemptions.* A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the paragraph (b) of this section requirement to create and maintain a bidders list. Also, a recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the paragraph (b) of this section bidders list requirement of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the paragraph (b) of this section bidders list requirements of this subpart.

§ 33.502 What are the reporting requirements of this part?

MBE and WBE participation must be reported by all recipients, including those recipients exempted under § 33.411 from the requirement to apply the fair share objectives, on EPA Form 5700-52A. Recipients of Continuing Environmental Program Grants under 40 CFR part 35, subpart A; recipients of Performance Partnership Grants (PPGs) under 40 CFR part 35, subpart B; General Assistance Program (GAP) grants for tribal governments and intertribal consortia; and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR part 30, will report on MBE and WBE participation on an annual basis. All other financial assistance agreement recipients, including recipients of financial assistance agreements capitalizing revolving loan funds, will report on MBE and WBE participation semiannually. Recipients of financial assistance agreements that capitalize revolving loan programs must require entities receiving identified loans to submit their MBE and WBE participation reports on a semiannual basis to the financial assistance agreement recipient, rather than to EPA.

§ 33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?

(a) *General.* Only certified MBEs and WBEs are to be counted towards MBE/WBE participation. Amounts of MBE and WBE participation are calculated as a percentage of total financial assistance

agreement project procurement costs, which include the match portion of the project costs, if any. For recipients of financial assistance agreements that capitalize revolving loan programs, the total amount is the total procurement dollars in the amount of identified loans equal to the capitalization grant amount.

(b) *Ineligible project costs.* If all project costs attributable to MBE and WBE participation are not eligible for funding under the EPA financial assistance agreement, the recipient may choose to report the percentage of MBE and WBE participation based on the total eligible and non-eligible costs of the project.

(c) *Joint ventures.* For joint ventures, MBE and WBE participation consists of the portion of the dollar amount of the joint venture attributable to the MBE or WBE. If an MBE's or WBE's risk of loss, control or management responsibilities is not commensurate with its share of the profit, the Agency may direct an adjustment in the percentage of MBE or WBE participation.

(d) *Central Purchasing or Procurement Centers.* A recipient must report MBE and WBE participation from its central purchasing or procurement centers.

(e) *Brokers.* A recipient may not count expenditures to a MBE or WBE that acts merely as a broker or passive conduit of funds, without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices.

(1) *Presumption.* If 50% or more of the total dollar amount of a MBE or WBE's prime contract is subcontracted to a non-DBE, the MBE or WBE prime contractor will be presumed to be a broker, and no MBE or WBE participation may be reported.

(2) *Rebuttal.* The MBE or WBE prime contractor may rebut this presumption by demonstrating that its actions are consistent with normal practices for prime contractors in its business and that it will actively perform, manage and supervise the work under the contract.

(f) *MBE or WBE Truckers/Haulers.* A recipient may count expenditures to an MBE or WBE trucker/hauler only if the MBE or WBE trucker/hauler is performing a commercially useful function. The following factors should be used in determining whether an MBE or WBE trucker/hauler is performing a commercially useful function:

(1) The MBE or WBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement

for the purpose of meeting MBE or WBE objectives.

(2) The MBE or WBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

Appendix A to Part 33—Term and Condition

Each procurement contract signed by an EPA financial assistance agreement recipient, including those for an identified loan under an EPA financial assistance agreement capitalizing a revolving loan fund, must include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

PART 35—[AMENDED]

Subpart E—[Amended]

■ 6. The authority citation for part 35, subpart E, continues to read as follows:

Authority: Secs. 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through 217, 304(d)(3), 313, 501, 511, and 516(b) of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

§ 35.936–7 [Removed]

■ 7. Section 35.936–7 is removed.

§ 35.938–9 [Amended]

■ 8. Section 35.938–9 is amended by removing and reserving paragraph (b)(2).

Subpart K—[Amended]

■ 9. The authority citation for part 35, subpart K, continues to read as follows:

Authority: Secs. 205(m), 501(a) and title VI of the Clean Water Act, as amended, 42 U.S.C. 1285(m), 33 U.S.C. 1361(a), 33 U.S.C. 1381–1387.

§ 35.3145 [Amended]

■ 10. Section 35.3145 is amended by removing paragraphs (d) and (e).

Subpart L—[Amended]

■ 11. The authority citation for part 35, subpart L, continues to read as follows:

Authority: Section 1452 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j-12.

§ 35.3575 [Amended]

■ 12. Section 35.3575(d) is removed and reserved.

Subpart M—[Amended]

■ 13. The authority citation for part 35, subpart M, continues to read as follows:

Authority: 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

§ 35.4170 [Amended]

■ 14. Section 35.4170(b) is removed and reserved.

§ 35.4205 [Amended]

■ 15. Section 35.4205(g) is removed.

§ 35.4240 [Amended]

■ 16. Section 35.4240(e) is removed and reserved.

Subpart O—[Amended]

■ 17. The authority citation for part 35, subpart O, continues to read as follows:

Authority: 42 U.S.C. 9601 *et seq.*

§ 35.6015 [Amended]

■ 18. Section 35.6015(a) is amended by removing the definitions for “Minority Business Enterprise (MBE)” and “Women’s Business Enterprise (WBE)”.

§ 35.6550 [Amended]

■ 19. Section 35.6550(a)(8) is removed and reserved.

§ 35.6580 [Amended]

■ 20. Section 35.6580 is removed.

§ 35.6610 [Amended]

■ 21. Section 35.6610(c) is removed and reserved.

§ 35.6665 [Removed]

■ 22. Section 35.6665 is removed.

PART 40—[Amended]

■ 21. The authority citation for part 40 is revised to read as follows:

Authority: 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2609 *et seq.*; 33 U.S.C. 1254 *et seq.* and 1443; 42 U.S.C. 241 *et seq.*, 300f *et seq.*, 1857 *et seq.*, 1891 *et seq.*, and 6901 *et seq.*

§ 40.145–3 [Amended]

■ 22. Section 40.145–3(c) is removed and reserved.

[FR Doc. E8–6003 Filed 3–25–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2006-0897; FRL-8547-1]

RIN 2060-AN44

Amendments to National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is publishing technical corrections through this direct final action to amend the national emission standards for acrylic and modacrylic fibers production, carbon black production, chemical manufacturing: chromium compounds, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving area sources published on July 16, 2007. The amendments clarify certain provisions in two of the final area source rules (flexible polyurethane foam production and fabrication and lead acid battery manufacturing) and correct editorial and publication errors in all of the final rules.

DATES: This rule is effective on June 24, 2008 without further notice, unless EPA receives adverse comment by April 25, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the relevant amendments in this rule, will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0897 by one of the following methods:

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

- *E-mail:* a-and-r-Docket@epa.gov.

- *Fax:* (202) 566-9744.

- *Mail:* National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving Docket, Environmental Protection Agency, Mailcode: 6102T,

1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0897. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production,

Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving Docket, EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243-02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541-2825; *fax number:* (919) 541-3207; *e-mail address:* nizich.sharon@epa.gov.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

- I. Why is EPA using a direct final rule?
- II. Does this action apply to me?
- III. Where can I get a copy of this document?
- IV. What should I consider as I prepare my comments to EPA?
- V. What are the changes to the area source NESHAPs?
 - A. NESHAP for Acrylic and Modacrylic Fibers Production Area Sources
 - B. NESHAP for Carbon Black Production Area Sources
 - C. NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds
 - D. NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources
 - E. NESHAP for Lead Acid Battery Manufacturing Area Sources
 - F. NESHAP for Wood Preserving Area Sources
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. Why is EPA using a direct final rule?

EPA is publishing the rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. The amendments to the national emission standards for hazardous air pollutants (NESHAP) consist of clarifications and

corrections that do not make material changes to the rule requirements. If we receive adverse comment on a distinct provision of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will

become effective on the date set out above, notwithstanding adverse comment on any other provision.

II. Does this action apply to me?

The regulated categories and entities potentially affected by the final rule include:

Category	NAICS code ¹	Examples of regulated entities
Industry:		
Acrylic and modacrylic fibers production.	325222	Area source facilities that manufacture polymeric organic fibers using acrylonitrile as a primary monomer.
Carbon black production	325182	Area source facilities that manufacture carbon black using the furnace, thermal, or acetylene decomposition process.
Chemical manufacturing: chromium compounds.	325188	Area source facilities that produce chromium compounds, principally sodium dichromate, chromic acid, and chromic oxide, from chromite ore.
Flexible polyurethane foam production.	326150	Area source facilities that manufacture foam made from a polyurethane polymer.
Flexible polyurethane foam fabrication operations.	326150	Area source facilities that cut or bond flexible polyurethane foam pieces together or to other substrates.
Lead acid battery manufacturing	335911	Area source facilities that manufacture lead acid storage batteries made from lead alloy ingots and lead oxide.
Wood preserving	321114	Area source facilities that treat wood such as lumber, ties, poles, posts, or pilings with a preservative.

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11393 of subpart LLLLLL (NESHAP for Acrylic and Modacrylic Fibers Production Area Sources), 40 CFR 63.11400 of subpart MMMMMM (NESHAP for Carbon Black Production Area Sources), 40 CFR 63.11407 of subpart NNNNNN (NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds), 40 CFR 63.11414 of subpart OOOOOO (NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources), 40 CFR 63.11421 of subpart PPPPPP (NESHAP for Lead Acid Battery Manufacturing Area Sources), or 40 CFR 63.11428 of subpart QQQQQQ (NESHAP for Wood Preserving Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

III. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly

proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

IV. What should I consider as I prepare my comments to EPA?

Do not submit information containing confidential business information (CBI) to EPA through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina Attention Docket ID No. EPA-HQ-OAR-2006-0897. Clearly mark all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

V. What are the changes to the area source NESHAPs?

A. NESHAP for Acrylic and Modacrylic Fibers Production Area Sources

On July 16, 2007 (72 FR 38899), we issued the NESHAP for Acrylic and Modacrylic Fibers Production Area Sources (40 CFR part 63, subpart LLLLLL). The final rule establishes air emission control requirements for new and existing acrylic or modacrylic fibers production plants. These direct final rule amendments make one editorial correction to the NESHAP. We are correcting a regulatory citation in the second sentence of paragraph (a) in 40 CFR 63.11399 (Who implements and enforces this subpart?) to add the phrase "part 63," which was inadvertently omitted from the final rule.

B. NESHAP for Carbon Black Production Area Sources

On July 16, 2007 (72 FR 38904), we issued the NESHAP for Carbon Black Production Area Sources (40 CFR part 63, subpart MMMMMM). Subpart MMMMMM establishes air emission control requirements for new and existing carbon black production process units.

1. 40 CFR 63.11402

We are correcting a regulatory citation in 40 CFR 63.11402 (What are the standards and compliance requirements for new and existing sources?) to read "§ 63.1103(f) of 40 CFR part 63, subpart YY" instead of "§ 63.1103 of subpart YY".

2. 40 CFR 63.11406

We are also making an editorial correction to the second sentence in paragraph (a) of 40 CFR 63.11406 (Who implements and enforces this subpart?) to add the phrase “part 63,” which was inadvertently omitted from the final rule.

C. NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds

On July 16, 2007 (72 FR 38905), we issued the NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds (40 CFR part 63, subpart NNNNNN). The final rule establishes air emission control requirements for new and existing chromium compounds manufacturing facilities.

1. 40 CFR 63.11410(c)

We are revising paragraph (c)(3)(iii) of 40 CFR 63.11410 to correct the biennial inspection requirements for wet electrostatic precipitators. The first sentence in paragraph (c)(3)(iii) identifies the components of the inside of the wet electrostatic precipitator that must be inspected during periodic inspections, and incorrectly lists “plate rappers” as one of the components to be inspected. We intended to make the periodic inspection requirements in 40 CFR 63.11410(c)(3) consistent with the initial inspection requirements in 40 CFR 63.11410(b)(3), which lists “plate wash spray heads” as a component that must be inspected but makes no mention of “plate rappers”. The amendment adds the term “plate wash spray heads” and removes the term “plate rappers” because wet electrostatic precipitators do not have plate rappers and instead use water sprays to clean the plates. We are also correcting a cross-referencing error in the second sentence of paragraph (c)(3)(iii) which requires that if an initial inspection is not required by paragraph (b)(2) of this section, the first inspection must not be more than 24 months from the last inspection. We are correcting the regulatory citation to read “paragraph (b)(3) of this section” so that the sentence refers to the initial inspection requirements for wet electrostatic precipitators instead of the initial inspection requirements for dry electrostatic precipitators.

2. 40 CFR 63.11413

We are also making an editorial correction to the second sentence of paragraph (a) in 40 CFR 63.11413 (Who implements and enforces this subpart?) to add the phrase “part 63,” which was inadvertently omitted from the final rule.

D. NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources

On July 16, 2007 (72 FR 38910), we issued the NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources (40 CFR part 63, subpart OOOOOO). The final rule applies to area source facilities that produce flexible polyurethane foam or rebond foam and flexible polyurethane foam fabrication facilities.

1. 40 CFR 63.11416

We are correcting a publication error in paragraph (b)(1) of 40 CFR 63.11416 (What are the standards for new and existing sources?). Paragraph (b)(1) at 72 FR 38911 (third column) was incorrectly printed as two separate paragraphs. We are correcting paragraph (b)(1) by combining the two sentences into one paragraph.

2. 40 CFR 63.11417

We are clarifying a provision in 40 CFR 63.11417 (What are the compliance requirements for new and existing sources?). Paragraph (b)(2) of 40 CFR 63.11417 requires the owner or operator of a slabstock flexible polyurethane foam production affected source who chooses to comply with prohibition on the use of methylene chloride in the production process to submit a notification of compliance status report. The second sentence in paragraph (b)(2) specifies that the notification of compliance status report must contain “the information detailed in § 63.9(h)(2)(i) paragraphs (A) and (G)” and that the report contain a specific compliance certification as stated in the rule. The amendment clarifies the NESHAP by removing the requirement that the notification of compliance status report contain the information detailed in § 63.9(h)(2)(i) paragraphs (A) and (G). In promulgating this rule, we did not intend to require compliance with the General Provisions (40 CFR part 63, subpart A) for slabstock foam production facilities that comply with the prohibition on the use of methylene chloride.

3. Table 1 to Subpart OOOOOO of Part 63

We are revising the introductory statement for Table 1 to Subpart OOOOOO of Part 63—Applicability of General Provisions to Subpart OOOOOO. As noted in 40 CFR 63.11418 of the NESHAP, the general provisions identified in Table 1 apply only to those affected sources that are subject to 40 CFR 63.11416(b)(1). Sources subject to 40 CFR 63.11416(b)(1) are owners or operators of new or existing slabstock

polyurethane foam production affected sources who choose to comply with the formulation limits for HAP auxiliary blowing agents. However, the introductory statement for Table 1 states that “as required in § 63.11418, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.” This statement could imply that the requirements in Table 1 apply to all owners or operators subject to the rule, which is not the case.

Therefore, we are clarifying the introductory statement to specify that the requirements in Table 1 apply to sources subject to 40 CFR 63.11416(b)(1).

4. 40 CFR 63.11420

We are also making an editorial correction to the second sentence in paragraph (a) of 40 CFR 63.11420 (Who implements and enforces this subpart?) to add the phrase “part 63,” which was inadvertently omitted from the final rule.

E. NESHAP for Lead Acid Battery Manufacturing Area Sources

On July 16, 2007 (72 FR 38913), we issued the NESHAP for Lead Acid Battery Manufacturing Area Sources (40 CFR part 63, subpart PPPPPP). Subpart PPPPPP establishes air emission control requirements for new and existing lead acid battery manufacturing plants. We are finalizing changes to the following sections.

1. 40 CFR 63.11423(c)

We are clarifying paragraph (c)(1) of 40 CFR 63.11423 (What are the standards and compliance requirements for new and existing sources?). Paragraph (c)(1) provides that existing sources are not required to conduct a performance test if: (1) A prior performance test was conducted using the same methods specified in 40 CFR 60.374 of the new source performance standards (NSPS) for lead acid batteries and there has been no process change at the facility, or (2) a prior performance test was conducted using the same methods specified in 40 CFR 60.374 and the source can reliably demonstrate compliance with the requirements notwithstanding process changes. Industry representatives suggested, and we agree, that a clarification is needed to indicate that “compliance” is intended to mean compliance with the standards in 40 CFR 60.372 of the NSPS. Therefore, we are adding the phrase “with this subpart” after the word “compliance”.

We are also correcting a cross-referencing error in paragraph (c)(2) of

40 CFR 63.11423, which incorrectly states that the provisions for prior performance tests are contained in paragraph (b) of this section. The prior performance test provisions are contained in paragraph (c)(1). We are correcting this error by changing the cross reference to cite paragraph (c)(1) of this section.

2. 40 CFR 63.11425(c)

We are also correcting an error in the deadline for the owner or operator of an existing source to submit the notification of compliance status report required by 40 CFR 63.9(h) of the general provisions. The date given in paragraph (c) of 40 CFR 63.11425 (What General Provisions apply to this subpart?), September 15, 2008, was set by adding 60 days to the compliance date for existing sources in the final rule. The applicable general provisions of part 63, however, allow sources additional time to submit the initial notification of compliance status when a performance test is required by the relevant standard. Specifically, 40 CFR 63.9(h)(2)(ii) requires the notification of compliance status be submitted within 60 days following completion of any compliance demonstration activity specified in the relevant standard. The NESHAP for lead acid battery manufacturers requires sources to conduct a performance test to demonstrate compliance, unless a prior performance test is sufficient as set forth in 40 CFR 63.11423(c), and the general provisions at 40 CFR 63.7(a)(2) require a source to conduct an initial performance test within 180 days of the compliance date. In sum, the applicable general provisions allow existing sources that cannot rely on a prior performance test to demonstrate compliance up to 240 days to submit the notification of compliance (180 days to conduct the performance test and 60 days to submit the notification). Consequently, we are correcting the date specified in 40 CFR 63.11425(c). The amended rule text now states: "For existing sources, the initial notification of compliance required by § 63.9(h) must be submitted not later than March 13, 2009."

3. 40 CFR 63.11426

We are also clarifying the introductory language in 40 CFR 63.11426 (What definitions apply to this subpart?) by removing the phrases "as specified in § 63.11425(a)" and "as specified in § 63.11425(b)." We are removing these phrases because changes made to the rule after proposal rendered the cross references to § 63.11425 incorrect and confusing. These changes

will prevent confusion over the rule requirements because these references to 40 CFR 63.11425 no longer have any meaning within the NESHAP. We are also adding "40 CFR" before the terms "part 60" and "part 63" to complete these regulatory references.

4. 40 CFR 63.11427

We are also making an editorial correction to paragraph (a) of 40 CFR 63.11427 (Who implements and enforces this subpart?) to add the phrase "part 63," which was inadvertently omitted from the final rule.

5. Table 1 to Subpart PPPPPP of Part 63

These direct final rule amendments also correct a publication error in Table 1 to Subpart PPPPPP of Part 63—Applicability of General Provisions to Subpart PPPPPP at 72 FR 38915 (second column). In this correction, we are adding the words "Notification Requirements" to the subject column for the citation to 40 CFR 63.9.

F. NESHAP for Wood Preserving Area Sources

On July 16, 2007 (72 FR 38915), we issued the NESHAP for Wood Preserving Area Sources (40 CFR part 63, subpart QQQQQQ). Subpart QQQQQQ establishes air emissions control requirements for new and existing wood preserving operations.

1. 40 CFR 63.11432

We are correcting a regulatory citation in 40 CFR 63.11432 (What General Provisions apply to this subpart?). The first sentence in paragraph (b) of 40 CFR 63.11432 incorrectly refers to § 63.9(a)(2) as requiring an initial notification of applicability. We are correcting the citation to read "§ 63.9(b)(2)."

2. 40 CFR 63.11434

We are making an editorial correction to the second sentence in paragraph (a) of 40 CFR 63.11434 (Who implements and enforces this subpart?) to add the phrase "part 63," which was inadvertently omitted from the final rule.

4. Table 1 to Subpart QQQQQQ of Part 63

We are also correcting a publication error in Table 1 to Subpart QQQQQQ of Part 63—Applicability of General Provisions to Subpart QQQQQQ as published at 72 FR 38917 (second and third columns). We are correcting the entry for § 63.6(e)(3)(i), (e)(3)(iii) through (e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(4), (h)(5)(i) through (h)(5)(iii), (h)(5)(v), and (h)(6) through (h)(9) to

remove the information contained in the second column (Subject) and third column (Applies to subpart QQQQQQ?) and add this information to the third and fourth columns.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden. EPA is taking this action to make certain clarifications and corrections to the six area source rules. These clarifications and corrections do not include or affect any information collection requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0598. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of the area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 1,000 employees for acrylic and modacrylic fibers production and chromium compounds manufacturing and less than 500 employees for carbon black production, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or

special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The amendments contained in this final rule will not impose any requirements or costs on small entities. These final amendments consist only of clarifications and corrections in each of the NESHAP, and these clarifications and corrections do not create any new requirements or burdens. The clarifications and corrections in these final amendments will facilitate compliance for small entities by making the applicability of certain requirements easier to understand.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in

the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA is taking this action to make certain clarifications and corrections to each of the area source NESHAP. No costs are associated with these clarifications and corrections. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. The clarifications and corrections made through this action contain no requirements that apply to such governments, impose no obligations upon them, and will not result in any expenditures by them or any disproportionate impacts on them. This final rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule makes certain clarifications and corrections to each of the area source NESHAP. These final clarifications and corrections do not impose requirements on State and local governments. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. The final rule makes certain clarifications and corrections to each of the area source NESHAP. These final clarifications and corrections do not impose requirements on tribal governments. They also have no direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the final rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it makes clarifications and corrections to each of the area source NESHAP that are based solely on technology performance.

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

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g.,

materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable voluntary consensus standards.

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

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The clarifications and corrections in this final rule do not change the level of control required by the NESHAP.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing these final rule amendments 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 final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule will be effective on June 24, 2008.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 20, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart LLLLLL—[Amended]

■ 2. Section 63.11399 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 63.11399 Who implements and enforces this subpart?

(a) * * * If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. * * *

Subpart MMMMMM—[Amended]

■ 3. Section 63.11406 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 63.11406 Who implements and enforces this subpart?

(a) * * * If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. * * *

Subpart NNNNNN—[Amended]

■ 4. Section 63.11410 is amended by revising paragraph (c)(3)(iii) to read as follows:

§ 63.11410 What are the compliance requirements?

* * * * *

(c) * * *

(3) * * *

(iii) You must conduct inspections of the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate wash spray heads, hopper, and air diffuser plates every 24 months. If an initial inspection is not required by paragraph (b)(3) of this section, the first inspection must not be more than 24 months from the last inspection.

* * * * *

■ 5. Section 63.11413 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 63.11413 Who implements and enforces this subpart?

(a) * * * If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. * * *

Subpart OOOOOO—[Amended]

■ 6. Section 63.11416 is amended by revising paragraph (b)(1) to read as follows:

§ 63.11416 What are the standards for new and existing sources?

* * * * *

(b) * * *

(1) Comply with § 63.1293(a) or (b) of subpart III, except that you must use Equation 1 of this section to determine the HAP auxiliary blowing agent (ABA) formulation limit for each foam grade instead of Equation 3 of § 63.1297 of subpart III. You must use zero as the formulation limitation for any grade of foam where the result of the formulation equation (using Equation 1 of this section) is negative (*i.e.*, less than zero):

$$ABA_{\text{limit}} = -0.2 (\text{IFD}) - 19.1 \left(\frac{1}{\text{IFD}} \right) - 15.3 (\text{DEN}) - 6.8 \left(\frac{1}{\text{DEN}} \right) + 36.5 \quad (\text{Equation 1})$$

Where:

ABA_{limit} = HAP ABA formulation limitation, parts methylene chloride ABA allowed per hundred parts polyol (pph).
IFD = Indentation force deflection, pounds.

DEN = Density, pounds per cubic foot.
* * * * *

■ 7. Section 63.11417 is amended by revising the second sentence in paragraph (b)(2) to read as follows:

§ 63.11417 What are the compliance requirements for new and existing sources?

(b) * * *
 (2) * * * The report must contain this certification of compliance, signed by a responsible official, for the standards in § 63.11416(b)(2): “This facility uses no material containing methylene chloride for any purpose on any slabstock flexible foam process.”

■ 8. Section 63.11420 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 63.11420 Who implements and enforces this subpart?

(a) * * * If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. * * *

■ 9. The introductory text preceding Table 1 to Subpart OOOOOO is removed and introductory text is added after the table heading to read as follows:

Table 1 to Subpart OOOOOO of Part 63—Applicability of General Provisions to Subpart OOOOOO

As required in § 63.11418, sources subject to § 63.11416(b)(1) must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

* * * * *

Subpart PPPPPP—[Amended]

■ 10. Section 63.11423 is amended by revising paragraphs (c)(1) and (2) to read as follows:

§ 63.11423 What are the standards and compliance requirements for new and existing sources?

(c) * * *
 (1) Existing sources are not required to conduct a performance test if a prior performance test was conducted using the same methods specified in 40 CFR 60.374 and either no process changes have been made since the test, or you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance with this subpart despite process changes.

(2) Sources without a prior performance test, as described in paragraph (c)(1) of this section, must conduct a performance test using the methods specified in 40 CFR 60.374 by 180 days after the compliance date.

■ 11. Section 63.11425 is amended by revising paragraph (c) to read as follows:

§ 63.11425 What General Provisions apply to this subpart?

(c) For existing sources, the initial notification of compliance required by § 63.9(h) must be submitted not later than March 13, 2009.

■ 12. The introductory text to § 63.11426 is revised to read as follows:

§ 63.11426 What definitions apply to this subpart?

The terms used in this subpart are defined in the CAA; 40 CFR 60.371; 40 CFR 60.2 for terms used in the applicable provisions of 40 CFR part 60,

subpart A; and § 63.2 for terms used in the applicable provisions of 40 CFR part 63, subpart A.

* * * * *

■ 13. Section 63.11427 is amended by:

- a. Revising the second sentence in paragraph (a);
- b. Revising the first sentence in paragraph (b)(2);
- c. Revising the first sentence in paragraph (b)(3); and
- d. Revising the first sentence in paragraph (b)(4) to read as follows:

§ 63.11427 Who implements and enforces this subpart?

(a) * * * If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. * * *

(b) * * *
 (2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). * * *

(3) Approval of a major change to monitoring under § 63.8(f). * * *

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). * * *

■ 14. Table 1 to Subpart PPPPPP of Part 63 is amended by removing the introductory text preceding the table and by adding introductory text after the table heading; and revising the entry for § 63.9 to read as follows:

Table 1 to Subpart PPPPPP of Part 63—Applicability of General Provisions to Subpart PPPPPP

As required in § 63.11425, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

Citation	Subject	Applies to subpart PPPPPP?	Explanation
63.9	Notification Requirements	Yes	

Subpart QQQQQQ—[Amended]

■ 15. Section 63.11432 is amended by revising the first sentence in paragraph (b) introductory text to read as follows:

§ 63.11432 What General Provisions apply to this subpart?

* * * * *

(b) If you own or operate a new or existing affected source that uses any wood preservative containing chromium, arsenic, dioxins, or

methylene chloride, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 90 days after the applicable compliance date specified in § 63.11429. * * *

* * * * *

■ 16. Section 63.11434 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 63.11434 Who implements and enforces this subpart?

(a) * * * If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. * * *

* * * * *

■ 17. Table 1 to Subpart QQQQQQ of Part 63 is amended by removing the introductory text preceding the table

and adding introductory text after the table heading; and revising the entry, “63.6(e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(4), (h)(5)(i)–(h)(5)(iii),

(h)(v)(v), (h)(6)–(h)(9)” to read as follows:
Table 1 to Subpart QQQQQQ of Part 63– Applicability of General Provisions to Subpart QQQQQQ

As required in § 63.11432, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

Citation	Subject	Applies to subpart QQQQQQ?	Explanation
* * * * *	* * * * *	* * * * *	* * * * *
63.6(e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(4), (h)(5)(i)–(h)(5)(iii), (h)(5)(v), (h)(6)–(h)(9).	No	Subpart QQQQQQ does not require a startup, shutdown, and malfunction plan or contain emission or opacity limits.
* * * * *	* * * * *	* * * * *	* * * * *

[FR Doc. E8–6184 Filed 3–25–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0107; FRL–8356–2]

Myclobutanil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of myclobutanil and its alcohol metabolite in or on artichoke, globe; black sapote; canistel; cilantro, leaves; leafy greens, subgroup 4A, except spinach; mamey sapote; mango; okra; papaya; sapodilla; star apple; and fruiting vegetable group 8, except tomato. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA is also deleting several established myclobutanil tolerances that are no longer needed.

DATES: This regulation is effective March 26, 2008. Objections and requests for hearings must be received on or before May 27, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0107. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert the docket ID number where indicated and select the “Submit” button. Follow the instructions on the [regulations.gov](http://www.regulations.gov)

website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse,

nursery, and floriculture workers; farmers.

- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2007-0107 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before May 27, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2007-0107, by one of the following methods:

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

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Petition for Tolerance

In the **Federal Register** of April 4, 2007 (72 FR 16352) (FRL-8119-2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 3E6562 and 6E7138) by IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. These petitions requested that 40 CFR 180.443 be amended by establishing tolerances for combined residues of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol

metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound), in or on Black sapote, canistel, mamey sapote, mango, papaya, sapodilla, and star apple at 3.0 parts per million (ppm) (PP 3E6562); and Fruiting vegetables, crop group 8, except tomato at 4.5 ppm; leafy vegetables, crop subgroup 4A, except spinach at 11.0 ppm; globe artichoke at 0.9 ppm; cilantro at 11.0 ppm; and okra at 4.5 ppm in (PP 6E7138). That notice referenced a summary of the petition prepared by Dow Agrosciences LLC, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised some of the commodity definitions and tolerance levels for certain commodities. The reason for these changes is explained in Unit IV.C.

EPA is also deleting several established tolerances in § 180.443(b) that are no longer needed. The tolerance deletions under § 180.443(b) are time-limited tolerances established under section 18 emergency exemptions. The time-limited tolerances for artichoke, globe and pepper are superceded by the establishment of general tolerances for myclobutanil and its alcohol metabolite under § 180.443(a) as a result of this action. The time-limited tolerances for sugar beet dried pulp, sugar molasses, refined sugar, roots, and tops are being deleted since they have expired.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." These provisions

were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of myclobutanil and its alcohol metabolite on artichoke, globe at 0.90 ppm; canistel at 3.0 ppm; cilantro, leaves at 9.0 ppm; leafy greens, crop subgroup 4A, except spinach at 9.0 ppm; mango at 3.0 ppm; okra at 4.0 ppm; papaya at 3.0 ppm; sapodilla at 3.0 ppm; sapote, black at 3.0 ppm; sapote, mamey at 3.0 ppm; star apple at 3.0 ppm; and vegetable, fruiting, group 8, except tomato at 4.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Myclobutanil has low acute toxicity with the exception for ocular irritation. In rat subchronic and chronic toxicity studies, the primary target organs are liver and testes. Liver effects, following subchronic exposure, include hypertrophy, hepatocellular necrosis and increased liver weight. Chronic exposure to the rat also results in hepatocellular vacuolization and additional testicular effects, which include bilateral aspermatogenesis, increased incidences of hypospermia and cellular debris in the epididymides and increased incidences of arteritis/periarteritis in the testes. With the exception of testicular effects, subchronic and chronic exposures in the mouse result in a toxicity profile similar to the rat. The mouse, following chronic exposure, has, in addition, increased Kupffer cell pigmentation, periportal punctate vacuolation, and individual cell necrosis of the liver. There is no evidence of carcinogenic potential in either the rat or mouse. In the subchronic dog study, there are hepatocellular hypertrophy, increased relative and absolute liver weight and increased alkaline phosphatase. In the chronic dog study, liver toxicity is similar with the addition of "ballooned"

hepatocytes and increases in serum glutamic pyruvic transaminase (SGPT) and gamma glutamyl transferase (GGT). Signs of toxicity observed in the rat 28-day dermal studies are limited to dermal irritation. There is no evidence of systemic toxicity in either study. There is no evidence of increased susceptibility in either of the developmental toxicity studies or the reproduction study. There is no concern for mutagenic activity. Myclobutanil was determined to be not carcinogenic in two acceptable animal studies.

Specific information on the studies received and the nature of the adverse effects caused by myclobutanil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of May 10, 2000 (65 FR 29963) (FRL-6555-5) (<http://www.epa.gov/fedrgstr/EPA-PEST/2000/May/Day-10/p11571.htm>).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles

EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.

A summary of the toxicological endpoints for myclobutanil used for human risk assessment can be found at <http://www.regulations.gov> in document Myclobutanil. Human-Health Risk Assessment for Proposed Use on Section 3 Requests for Use on Snap Bean, Mint, Papaya, Gooseberry, Currant, Caneberry, Bell and Non-Bell Pepper, Head and Leaf Lettuce, and Artichoke at page 7 in docket ID number EPA-HQ-OPP-2007-0107.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to myclobutanil, EPA considered exposure under the petitioned-for tolerances as well as all existing myclobutanil tolerances in 40 CFR 180.443. EPA assessed dietary exposures from myclobutanil food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. An acute dietary exposure assessment was performed for females 13 to 49 years old. No acute endpoint was identified for the general U.S. population or any other population subgroup.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994-1996 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994-1996 and 1998 CSFII. As to residue levels in food, EPA used USDA Pesticide Data Program (PDP) monitoring data for apple juice, bananas (not plantains) and milk. Tolerance level residues were used for all other registered and proposed uses. Average percent cropped treated (PCT) information was used for some commodities and 100 PCT information was used for all other registered and proposed uses.

iii. *Cancer.* Based on the results of carcinogenicity studies in rats and mice, myclobutanil has been classified as "Not likely to be carcinogenic to

humans." Consequently, a quantitative cancer exposure and risk assessment is not appropriate for myclobutanil.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to FFDCA section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

a. The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue.

b. The exposure estimate does not underestimate exposure for any significant subpopulation group.

c. Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: 40% apples (except juice); 15% almonds; 25% apricots; 55% artichokes; 5% asparagus; 1% green beans; 15% blackberries; 1% broccoli; 10% cantaloupes; 5% cauliflower; 35% cherries; 1% cucumber; 25% grapes; 65% hops; 1% mint; 10% nectarines; 10% peaches; 10% plums; 15% pumpkins; 25% raspberries; 1% soybeans; 10% squash; 35% strawberries; 1% sugar beets; 5% tomatoes; and 5% watermelons.

The Agency used projected percent crop treated (PPCT) information for peppers estimating 46% of peppers are treated.

EPA estimates PPCT for myclobutanil use on peppers by assuming that the PCT during the pesticide's initial 5 years of use on a specific use site will not exceed the average PCT of the

dominant pesticide (i.e., the one with the greatest PCT) on that site over the three most recent surveys. Comparisons are only made among pesticides of the same pesticide types (i.e., the dominant insecticide on the use site is selected for comparison with a new insecticide). The PCTs included in the average may be each for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year selected. Typically, EPA uses USDA/NASS as the source for raw PCT data because it is publicly available and does not have to be calculated from available data sources. When a specific use site is not surveyed by USDA/NASS, EPA uses proprietary data and calculates the estimated PCT.

This estimated PPCT, based on the average PCT of the market leader is appropriate for use in the chronic dietary risk assessment. This method of estimating a PPCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use. The predominant factors that bears on whether the estimated PPCT could be exceeded are whether the new pesticide use is more efficacious or controls a broader spectrum of pests than the dominant pesticides, whether there are concerns with pest pressures as indicated in emergency exemption requests or other readily available information, and whether the pathogenicity of the pest is prevalent in other states. All information currently available has been considered for myclobutanil, and it is the opinion of EPA that it is unlikely that actual PCT for myclobutanil will exceed the estimated PPCT during the next 5 years.

The Agency believes that the three conditions listed in Unit III.C.1.vi. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to

residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which myclobutanil may be applied in a particular area.

2. Dietary exposure from drinking water. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for myclobutanil in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of myclobutanil. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of myclobutanil for acute exposures are estimated to be 120.1 parts per billion (ppb) for surface water and 2.83 ppb for ground water. The estimated environmental concentrations for chronic exposures are estimated to be 46.3 ppb for surface water and 2.83 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 120.1 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 46.3 ppb was used to access the contribution to drinking water.

3. From non-dietary exposure. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Myclobutanil is currently registered for use on the following residential non-dietary sites: turf, ornamentals, and home garden uses on vegetables, fruit trees, nut trees, berries and mint. The risk assessment was conducted using the following residential exposure assumptions:

For adults, there is potential for short-term dermal and inhalation handler exposure, and short-term dermal post-application exposures from the residential uses of myclobutanil, including "pick your own" orchards,

home fruit and vegetable gardens, and treated turf. Since myclobutanil is applied at 7- to 14-day intervals, only short-term exposure is expected for the residential handler. For children/toddlers, short-term dermal and non-dietary oral post-application exposures may result from dermal contact with treated turf as well as non-dietary ingestion/hand-to-mouth transfer of residues from turf grass. Intermediate-term post-application exposures may result for adults from dermal contact with treated fruits and vegetables at "pick your own" gardens, treated home fruit and vegetable gardens and treated turf. For toddlers, intermediate-term dermal and non-dietary oral post-application exposures may result from dermal contact with treated turf as well as non-dietary ingestion/hand-to-mouth transfer of residues from turf grass. Based on the current use patterns, no chronic residential exposures are expected.

The current use patterns and labeling indicate that a variety of application equipment could be used by the homeowner to apply myclobutanil to ornamental plants, shrubs, fruit trees, home garden vegetables and lawns. Therefore, the following scenarios were assessed:

- i. Aerosol spray can application to ornamentals and fruit trees;
- ii. Hose end sprayer application to ornamentals and fruit trees;
- iii. Low-pressure (LP) handwand application to ornamentals;
- iv. LP handwand application to vegetables;
- v. Ready to use (RTU) sprayer application to vegetables;
- vi. Hose end sprayer application to vegetables;
- vii. Hose end sprayer - mix your own - application to turf;
- viii. Hose end sprayer - ready to use - application to turf;
- ix. Belly grinder application to turf;
- x. Broadcast spreader application to turf.

Unit exposure data were either taken from Pesticide Handler's Exposure Database (PHED) study data or from the home garden and turf application studies that were sponsored by the Outdoor Residential Exposure Task Force (ORETF).

Home garden post-application exposures can occur when home gardeners perform tasks such as weeding, pruning or hand harvesting following application of myclobutanil. In order to address these risks, the post-application exposure to home gardens and orchard scenarios were assessed based upon the Residential Standard

Operating Procedures (SOP) 3.0 for Garden Plants and SOP 4.0 for Trees.

Two dislodgeable foliar residue (DFR) studies on grapes in California were used to assess the home garden exposures. The studies were performed using airblast sprayers while the proposed home garden applications would be made with LP handwand or hose end sprayers. Based upon experience with other fungicides, however, it is anticipated that DFRs resulting from handwand applications would be similar to DFRs from airblast applications. The initial DFR was assumed to be 23% of the application rate.

"Pick your own" exposures can occur at commercially operated "pick your own" strawberry farms and orchards where myclobutanil has been applied. To address these risks, post-application exposure for pick your own strawberries and tree fruit were assessed based upon the Residential SOP 15.0 for "pick your own" strawberries. The DFR data that were used for the home gardener post-application risks were also used to assess "pick your own" exposures. The exposure estimates used for pick your own exposures are considered conservative because that scenario is based upon a screening-level transfer coefficient (TC) and a dermal absorption factor of 50%.

The following exposure scenarios were assessed for residential post-application risks:

- Toddlers playing on treated turf;
 - Adults performing yard work on treated turf;
 - Adults playing golf on treated turf.
- A total radioactive residue (TTR) study was used to assess the turf exposures. The field portion of this study was in North Carolina and California. The initial TTR for dermal exposures was assumed to be 2.4% of the application rate and was based upon an average of the days after treatment (DAT) of 0 and DAT of 3 for the California site. The maximum application rate for turf of 0.62 to 0.68 lb active ingredient/Acre was used to assess the turf exposures.

Additional information on residential exposure assumptions can be found at <http://www.regulations.gov> in the document "Myclobutanil, Human-Health Risk Assessment for Proposed Use on Section 3 Requests for Use on Snap Bean, Mint, Papaya, Gooseberry, Currant, Caneberry, Bell and Non-Bell Pepper, Head and Leaf Lettuce, and Artichoke," in docket ID number EPA-HQ-OPP-2007-0107.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA

requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Myclobutanil is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events, including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at <http://www.epa.gov/pesticides/cumulative>.

Myclobutanil is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazole alanine and triazole acetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including myclobutanil, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the

additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at <http://www.regulations.gov> (Docket ID EPA-HQ-OPP-2005-0497). Additional information regarding the uses proposed for myclobutanil in this action can also be found at <http://www.regulations.gov> in the following documents: 1,2,4-Triazole Revised Chronic and Acute Aggregate Dietary Exposure Assessments to Include for New Uses of Myclobutanil on Snap Bean, Mint, Papaya, Gooseberry, Currant, Caneberry, Bell and Non-Bell Pepper, Head and Leaf Lettuce, and Artichoke, and Triazole Alanine and Triazole Acetic Acid Revised Chronic and Acute Aggregate Dietary Exposure Assessments for New Uses of Myclobutanil on Snap Bean, Mint, Papaya, Gooseberry, Currant, Caneberry, Bell and Non-Bell Pepper, Head and Leaf Lettuce, and Artichoke in docket ID number EPA-HQ-OPP-2007-0107.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional ("10X") tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There is no indication of quantitative or qualitative increased susceptibility in rats or rabbits from *in utero* and/or postnatal exposure to myclobutanil. In the rat developmental toxicity study, maternal toxicity, which included rough hair coat and salivation, alopecia, desquamation and red exudate around mouth occurs at the same dose level as increases in incidences of 14th rudimentary and 7th cervical ribs in the fetuses. The maternal and developmental toxicity NOAELs in the rat developmental toxicity study were

93.8 mg/kg/day. EPA concludes that there is no evidence qualitative susceptibility in rat developmental toxicity study since the fetal variations (14th rudimentary ribs and 7th cervical ribs) are normal occurrence control animals that occurred in the presence of severe maternal toxicity (red exudate around mouth and salivation). In the rabbit developmental toxicity study there is reduced body weight and body weight gain during the dosing period, clinical signs of toxicity such as bloody urine and bloody urogenital or anal area and a possible increase in abortions (blood and/or aborted material in the cage pan) in the does at the same dose level as developmental toxicity manifested as increased resorptions, decreased litter size and decreased viability index. The maternal and developmental toxicity NOAELs in the rabbit developmental toxicity study were 93.8 mg/kg/day. EPA concludes that there is no evidence qualitative susceptibility in rabbit developmental toxicity study since the fetal effects (resorptions, decreased litter size and viability) occurred in the presence of equally severe maternal toxicity (abortions, bloody urine and bloody urogenital or anal area). The maternal NOAEL in the 2-generation reproduction study was 50 ppm (2.5 mg/kg/day) based on hepatocellular hypertrophy and increased liver weight seen at 200 ppm (10 mg/kg/day; LOAEL). The offspring toxicity NOAEL was 200 ppm (10 mg/kg/day) based on decreased pup body weight gain during lactation seen at 1,000 ppm (50 mg/kg/day; LOAEL). The reproductive toxicity NOAEL was 200 ppm (10 mg/kg/day) based on increased incidences in the number of still born pups and atrophy of the testes, epididymides and prostate observed at 1,000 ppm (50 mg/kg/day; LOAEL). EPA concludes that there is no evidence on increased susceptibility (qualitative or quantitative) in the 2-generation reproduction study in rats because the offspring and reproductive toxicity were observed at a higher dose than the dose that caused maternal toxicity.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for myclobutanil is complete.

ii. There is no indication that myclobutanil is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that myclobutanil results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessment (females 13 to 49 years old only) utilizes existing and proposed tolerance level residues and 100 PCT information for all commodities. The chronic dietary food exposure assessment utilizes existing and proposed tolerance level residues; USDA Pesticide Data Program (PDP) monitoring data for apple juice, bananas (not plantains) and milk; average PCT data for some commodities and 100 PCT information for all other commodities. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters, which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded. Finally, the residential handler assessment is based upon the residential standard operating procedures (SOPs) and utilized unit exposure data from the Outdoor Residential Exposure Task Force (ORETF) and the Pesticide Handler's Exposure Database (PHED). The residential post-application assessment is based upon chemical-specific turf transferable residue (TTR) data and DFR data. The chemical-specific study data as well as the surrogate study data used are reliable and also are not expected to underestimate risk to adults as well as to children. In a few cases where chemical-specific data were not available, the SOPs were used alone. The residential SOPs are based upon reasonable "worst-case" assumptions and are not expected to underestimate risk. These assessments of exposure are not likely to underestimate the exposure to myclobutanil.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for

by the product of all applicable UFs is not exceeded.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure for females 13 to 49 years old (no acute endpoint was identified for the general U.S. population or any other population subgroup), the acute dietary exposure from food and water to myclobutanil will occupy 4% of the aPAD for females 13 to 49 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to myclobutanil from food and water will utilize 30% of the cPAD for children 1 to 2 years old, the subpopulation group with greatest exposure. Based on the use pattern, chronic residential exposure to residues of myclobutanil is not expected.

3. *Short-term risk and Intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Myclobutanil is currently registered for uses that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for myclobutanil. As discussed in Unit III.C.3., short-term and intermediate-term exposures were assessed for adults and for children/toddlers. A NOAEL (10 mg/kg/day) from a 2-generation reproduction toxicity study in rats was used for assessing short-term and intermediate-term dermal, inhalation and incidental oral exposures; therefore, the short-term and intermediate-term aggregate risk estimates from the post-application exposure scenarios are the same for the general U.S. population and children/toddlers.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs ranging from 110 to 990: 110 for post-application exposures for adults for "pick your own fruit" operations; 120 for post-application exposures for adults to turf, heavy yard work; 130 post-application exposures for children playing on the lawn; 170 for adult handlers; 280 for adult post application exposures to home gardens; and 980 for adult post applications exposures while playing golf.

4. *Aggregate cancer risk for U.S. population.* The Agency has classified myclobutanil as not likely to be a

human carcinogen. Myclobutanil was determined to be not carcinogenic in two acceptable animal studies. Myclobutanil is not expected to pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to myclobutanil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/nitrogen-phosphorus detector (GC/NPD) for myclobutanil and gas chromatography/electron-capture detection (GC/ECD) for the alcohol metabolite) is available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican MRLs for myclobutanil.

C. Explanation of Tolerance Revisions

Based upon review of the data supporting the petitions, EPA revised the tolerance levels based on analyses of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data Standard Operating Procedure (SOP) as follows: (1) PP 3E6562 from 3.0 ppm to 4.0 ppm for canistel; mango; papaya; sapodilla; sapote, black; sapote, mamey; and star apple; (2) PP 6E7138 from 4.5 ppm to 4.0 ppm for fruiting vegetables, crop group 8, except tomato and okra; from 11 ppm to 9.0 ppm for leafy vegetables, crop subgroup 4A, except spinach and cilantro; and from 0.9 ppm to 0.90 ppm for globe artichoke.

V. Conclusion

Therefore, tolerances are established for combined residues of myclobutanil and its alcohol metabolite on artichoke, globe at 0.90 ppm; canistel at 3.0 ppm; cilantro, leaves at 9.0 ppm; leafy greens, crop subgroup 4A, except spinach at 9.0 ppm; mango at 3.0 ppm; okra at 4.0 ppm; papaya at 3.0 ppm; sapodilla at 3.0 ppm; sapote, black at 3.0 ppm; sapote, mamey at 3.0 ppm; star apple at 3.0 ppm; and vegetable, fruiting, group 8, except tomato at 4.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, this rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded

Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 13, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.443 is amended by removing from the table in paragraph (b) the entries for artichoke, globe; beet, sugar, dried pulp; beet, sugar, molasses; beet, sugar, refined sugar; beet, sugar, roots; beet, sugar, tops; and pepper and by alphabetically adding commodities to the table in paragraph (a) to read as follows:

180.443 Myclobutanil; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Artichoke, globe	0.90
* * * * *	
Canistel	3.0

Commodity	Parts per million
* * * * *	*
Cilantro, leaves	9.0
Leafy greens, subgroup 4A, except spinach	9.0
Mango	3.0
Okra	4.0
Papaya	3.0
Sapodilla	3.0
Sapote, black	3.0
Sapote, mamey	3.0
Star apple	3.0
Vegetable, fruiting, group 8, except tomato	4.0
* * * * *	*

[FR Doc. E8-6205 Filed 3-25-08; 8:45 am]
BILLING CODE 6560-50-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

42 CFR Part 1008

Medicare and State Health Care Programs: Fraud and Abuse; Issuance of Advisory Opinions by OIG

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996, this final rule amends the OIG regulations at 42 CFR part 1008 by (1) revising the process for advisory opinion requestors to submit payments for advisory opinion costs, and (2) clarifying that notices to the public announcing procedures for processing advisory opinion requests will be published on OIG's Web site.

DATES: *Effective Date:* These regulations are effective on April 25, 2008.

Comment Period: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on April 25, 2008.

ADDRESSES: In commenting, please refer to file code OIG-223-IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at <http://www.regulations.gov>. (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG-223-IFC, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close period to Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 358-3141.

For information on viewing public comments, please see section IV in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Meredith Melmed, Office of Counsel to the Inspector General, (202) 619-0335.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 205 of Public Law 104-191

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-101, specifically required the Department to provide a formal guidance process to requesting individuals and entities regarding the application of the anti-kickback statute, the safe harbor provisions, and other OIG health care fraud and abuse sanctions. In accordance with section 205 of HIPAA, the Department, in consultation with the Department of Justice, issues written advisory opinions to parties with regard to: (1) What constitutes prohibited remuneration under the anti-kickback statute; (2) whether an arrangement or proposed arrangement satisfies the criteria in section 1128B(b)(3) of the Social Security Act (the Act), or established by regulation, for activities which do not result in prohibited remuneration; (3) what constitutes an inducement to reduce or limit services to Medicare or Medicaid program beneficiaries under

section 1128A(b) of the Act¹; and (4) whether an activity or proposed activity constitutes grounds for the imposition of civil or criminal sanctions under sections 1128, 1128A, or 1128B of the Act.

B. OIG Final Regulations

OIG published an interim final rule (62 FR 7350; February 19, 1997) establishing a new part 1008 in 42 CFR chapter V addressing various procedural issues and aspects of the advisory opinion process. In response to public comments received on the interim final regulations, we published a final rule (63 FR 38311; July 16, 1998) revising and clarifying various aspects of the earlier rulemaking. The rulemaking established procedures for requesting an advisory opinion. Specifically, the rule provided information to the public regarding costs associated with preparing an opinion and procedures for submitting an initial deposit and final payment to OIG for such costs.

II. Provisions of the Interim Final Rule

By statute, the Department must charge a fee equal to the costs incurred by the Department in responding to a request for an advisory opinion. (42 U.S.C. 1320a-7d(b)(5)(B)(ii)). Under the interim final and final advisory opinion rules, we directed requestors to make an initial payment to the U.S. Treasury by check or money order in the amount of \$250. The regulations have also allowed for the acceptance of final payment of the fee by check or money order.

Through this interim final rule, we are setting forth several revisions to the payment process for advisory opinion requests. Specifically, we are modifying our procedures for submitting an advisory opinion request by deleting the current requirements at §§ 1008.31(b) and 1008.36(b)(6) for an initial payment of \$250 for each advisory opinion request, and replacing the existing provision set forth in § 1008.31(b) with a requirement that payment for an advisory opinion be made directly to the Treasury of the United States, as directed by OIG. In addition, we are amending § 1008.43(d) to state that an advisory opinion will be issued following receipt by OIG of confirmation that payment in full has been remitted by the requesting party to the Department of Treasury as directed by OIG.

¹ Public Law 104-191 erroneously cited this provision as section 1128B(b) of the Act. Section 4331(a) of the Balanced Budget Act of 1997, Public Law 105-33, corrected this citation to section 1128A(b) of the Act.

A. Electronic Payment Directly to the U.S. Treasury

As of the effective date of this rule, we will no longer accept checks or money orders from requesting parties and will require payments to be made directly to the United States Treasury through wire or other electronic funds transfer. Changing the requirement that payment be made by check or money order to provide for wire or other electronic funds transfers will create efficiencies in processing payments for advisory opinion requests, reduce the use of staff resources to process such payments, and reduce the burden on requesting parties.

B. Elimination of Initial Deposit

We are also eliminating the initial deposit payment from the requirements for submitting an advisory opinion request. A deposit is not required by statute. We believe that deleting the initial deposit payment will further streamline the electronic payment process and will eliminate administrative burdens that may arise if an initial deposit must be returned. For instance, where parties erroneously submit requests that are wholly outside our authority to issue an advisory opinion, such as requests regarding issues arising under the physician self-referral law (42 U.S.C. 1395nn), returning funds submitted directly to the Department of Treasury would be cumbersome. In addition, eliminating the initial deposit requirement will reduce the burden on requesting parties by consolidating the parties' payment obligations into one final payment. We will provide additional instructions to the public on our Web site (<http://www.oig.hhs.gov>) for paying fees owed for advisory opinions via wire or other electronic funds transfer.

III. Regulatory Impact Statement

A. Administrative Procedure Act

OIG has determined that the public notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to this rule because the rule is procedural in nature and does not alter the substantive rights of the affected parties. Therefore, this rule satisfies the exemption from notice and comment rulemaking in 5 U.S.C. 553(b)(A). OIG nevertheless invites comments on this rule and will consider all timely submitted comments.

The advisory opinion process is an established OIG program. This rule is limited to modifying the processing of payments received for advisory opinion requests. It does not modify eligibility of a party to request an advisory opinion, nor does it modify the standards under

which OIG will accept and/or analyze a request. OIG expects that this rule will further the public's interest in minimal burden by deleting the requirement for an initial payment of a deposit to be credited toward the final advisory opinion processing costs and by allowing the use of electronic transfers of funds. The rule will also provide greater efficiency in processing payments from requestors and will save staff time.

B. Regulatory Analysis

We have examined the impact of this rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act (RFA) of 1980, and Executive Order 13132.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects (*i.e.*, \$100 million or more in any given year).

This is not a major rule, as defined at 5 U.S.C. 804(2), and it is not economically significant since the overall economic effect of the rule is less than \$100 million annually. As indicated in Section II of this preamble, this rule deals exclusively with the procedural issues involved in the payment for advisory opinions issued by OIG. This rule does not address the substance of the anti-kickback statute or other sanction statutes. This rule does not change any costs associated with requesting an advisory opinion, but, rather, clarifies the procedures for submitting statutorily-mandated payment for costs incurred preparing an advisory opinion. We believe that the aggregate economic impact of this rule will be minimal and will have no effect on the economy or on Federal or State expenditures. To the extent that there is any economic impact, that impact will likely result in savings of Federal dollars through the improved efficiencies in the use of staff resources for processing advisory opinion requests and payments related to advisory opinion requests, as well as savings for parties that request advisory opinions.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public

Law 104-4, requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local or tribal governments, in the aggregate, or by the private sector, of \$110 million. Since the rule merely revises the process for paying for advisory opinions and creates greater efficiencies in processing payments, we believe that this rule that will not impose any mandates on State, local, or tribal governments or the private sector that would result in an expenditure of \$110 million or more (adjusted for inflation) in any given year, and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

Regulatory Flexibility Act

The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, certain nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. The RFA, as amended, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities when the agency is required to publish a general notice of proposed rulemaking for any proposed rule. Because this rule is being issued as an interim final rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this rule would not significantly limit the rights, roles, and responsibilities of State or local governments. We have determined, therefore, that a full analysis under Executive Order 13132 is not necessary.

The Office of Management and Budget (OMB) has reviewed this rule in accordance with Executive Order 12866.

C. Paperwork Reduction Act

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are required to solicit public comments, and receive

final OMB approval, on any information collection requirements set forth in rulemaking.

This rule will not impose any information collection burden or affect information currently collected by OIG.

IV. Inspection of Public Comments

All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on <http://www.regulations.gov> as soon as possible after they have been received.

Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619-0089.

List of Subjects in 42 CFR Part 1008

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Medicare, Penalties.

■ Accordingly, 42 CFR chapter V, subchapter B is amended as set forth below:

PART 1008—[AMENDED]

■ 1. The authority citation for part 1008 continues to read as follows:

Authority: 42 U.S.C. 1320a-7d(b)

■ 2. Section 1008.31 is amended by revising paragraph (b) to read as follows:

§ 1008.31 OIG fees for the cost of advisory opinions.

* * * * *

(b) *Payment Method.* Payment for a request for an advisory opinion must be made to the Treasury of the United States, as directed by OIG.

* * * * *

■ 3. Section 1008.36 is amended by removing paragraph (b)(6) and redesignating paragraphs (b)(7) and (b)(8) as (b)(6) and (b)(7) respectively.

* * * * *

■ 4. Section 1008.43 is amended by revising paragraph (d) to read as follows:

§ 1008.43 Issuance of a formal advisory opinion.

* * * * *

(d) After OIG has notified the requestor of the full amount owed and OIG has determined that the full payment of that amount has been

properly paid by the requestor, OIG will issue the advisory opinion and promptly mail it to the requestor by regular first class U.S. mail.

Dated: January 30, 2008.

Daniel R. Levinson,
Inspector General.

Approved: February 28, 2008.

Michael O. Leavitt, Secretary.

[FR Doc. E8-6164 Filed 3-25-08; 8:45 am]

BILLING CODE 4152-01-P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Contract Clauses

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Cost Accounting Standards (CAS) Board has adopted, without change, a final rule to add a clause for inclusion in CAS-covered contracts and subcontracts awarded to foreign concerns. The Board is taking this action to provide a standard clause for use by Government and contractor personnel in applying the CAS requirements to contracts and subcontracts awarded to foreign concerns.

DATES: *Effective Date:* April 25, 2008.

FOR FURTHER INFORMATION CONTACT: Laura Auletta, Manager, Cost Accounting Standards Board, 725 17th Street, NW., Room 9013, Washington, DC 20503 (telephone: 202-395-3256). Reference CAS-2007-01F.

SUPPLEMENTARY INFORMATION:

A. Background

The CAS Board published a proposed rule on June 14, 2007 (72 FR 32829) to provide a clause for use in contracts with foreign concerns. Prior to November 4, 1993, modified CAS coverage required a contractor to comply with only CAS 401 and CAS 402. Similarly, 9903.201-1(b)(4) required that foreign concerns comply with only CAS 401 and 402. Thus, prior to November 4, 1993, the contract clause at 9903.201-4(c) was used for both contracts with modified coverage and contracts with foreign concerns.

However, on November 4, 1993, the Board revised the definition of modified coverage to include CAS 405 and 406, so that modified coverage currently

includes CAS 401, 402, 405, and 406 (see 9903.201-2(b)). In conjunction with the revised definition of modified coverage, the Board also amended the clause at 9903.201-4(c) to include CAS 405 and 406. However, the Board did not change the requirement that foreign concerns comply with only CAS 401 and 402. As a result, the contract clause at 9903.201-4(c) could not be used for foreign concerns without modification by the parties.

This final rule provides a clause for use in contracts with foreign concerns that will not require modification. Except that it includes only CAS 401 and 402, this clause is identical to the clause currently applicable to contracts subject to modified coverage. To effect this change, this final rule amends 9903.201-4, Contract Clauses, to include the new clause at (f), Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

The Board received no public comments in response to the proposed rule and has adopted the proposed rule as a final rule without change.

B. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96-511, does not apply to this rulemaking, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

C. Regulatory Flexibility Act, Unfunded Mandates Reform Act, Congressional Review Act, and Executive Orders 12866 and 13132

The Board certifies that this rule will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses are exempt from the application of the Cost Accounting Standards. For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Orders 12866 and 13132, the final rule will not significantly or uniquely affect small governments, does not have federalism implications, and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more. In addition, the Board has determined that this rule is not economically significant under the provisions of Executive Order 12866 or otherwise subject to Executive Order 12866 review. Finally, the final rule is not a “major rule” under 5 U.S.C. Chapter 8; the rule will not have any of the effects set forth in 5 U.S.C. 804(2).

List of Subjects in 48 CFR Part 9903

Government procurement, Cost Accounting Standards.

Paul A. Denett,

Administrator, Office of Federal Procurement Policy.

■ For the reasons set forth in this preamble, Chapter 99 of Title 48 of the Code of Federal Regulations is amended as set forth below:

PART 9903—CONTRACT COVERAGE

■ 1. The authority citation for part 9903 continues to read as follows:

Authority: Pub. L. 100-679, 102 Stat. 4056, 41 U.S.C. 422.

Subpart 9903.2—CAS Program Requirements

■ 2. Section 9903.201-4 is revised to read as follows:

9903.201-4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 9903.201-1), the contract is subject to modified coverage (see 9903.201-2), or the clause prescribed in paragraph (e) of this section is used.

(2) The clause below requires the contractor to comply with all CAS specified in part 9904, to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

COST ACCOUNTING STANDARDS (JUNE 2007)

(a) Unless the contract is exempt under 9903.201-1 and 9903.201-2, the provisions of 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclosed in writing the Contractor's cost accounting practices as required by 9903.202-1 through 9903.202-5 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating

and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability of such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied

with an applicable CAS in part 9904 or a CAS rule or regulation in part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201-4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$650,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

(End of Clause)

(b) [Reserved]

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over \$650,000 but less than \$50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201-2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) The clause below requires the contractor to comply with CAS 9904.401, 9904.402, 9904.405, and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (JUNE 2007)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting for Unallowable Costs; and 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of

award of this contract, as indicated in part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201-6(c) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201-4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$650,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

(End of clause)

(d) [Reserved]

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 9903.201-1), the contract is to be performed by an FFRDC (see 9903.201-2(c)(5)), or the provision at 9903.201-2(c)(6) applies.

(2) The clause below requires the educational institution to comply with all CAS specified in part 9905, to disclose actual cost accounting practices as required by 9903.202-1(f), and to follow disclosed and established cost accounting practices consistently.

COST ACCOUNTING STANDARDS— EDUCATIONAL INSTITUTIONS (JUNE 2007)

(a) Unless the contract is exempt under 9903.201-1 and 9903.201-2, the provisions of part 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 9903.202-1 through 9903.202-5 including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting

practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9905, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting

practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of \$650,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

(f) *Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.*

(1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in negotiated contracts when the contract is with a foreign concern and the contract is not otherwise exempt under 9903.201–1 (see 9903.201–2(e)).

(2) The clause below requires the contractor to comply with 9904.401 and 9904.402, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES—FOREIGN CONCERNS (April 25, 2008)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; and 9904.402, Consistency in Allocating Costs

Incurred for the Same Purpose, in effect on the date of award of this contract, as indicated in Part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202–1 through 9903.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201–6(c) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in Parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the

substance of the applicable clause set forth in 9903.201–4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$650,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of Clause)

[FR Doc. E8–5981 Filed 3–24–08; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XG62

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for shallow-water species by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to allow the shallow-water species fishery in the GOA to resume.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 21, 2008, through 1200 hrs, A.l.t., April 1, 2008.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 7, 2008.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XG62, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>;
- Mail: P.O. Box 21668, Juneau, AK 99802;

- Fax: (907) 586–7557; or
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change.

All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

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

NMFS closed the shallow-water species fishery by vessels using trawl gear in the GOA under § 679.21(d)(7)(i)

on February 27, 2008 (73 FR 10562, February 27, 2008).

NMFS has determined that, approximately 99 mt remain in the first seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the shallow-water species fishery in the GOA to resume, NMFS is terminating the previous closure and is reopening directed fishing for shallow-water species by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and “other species.”

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 opening of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 17, 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 § 679.25 and § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 20, 2008.

Emily H. Menashes

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

[FR Doc. 08-1073 Filed 3-21-08; 2:13 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 73, No. 59

Wednesday, March 26, 2008

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

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[DHS Docket No. ICEB-2006-0004; ICE 2377-06]

[RIN 1653-AA50]

Safe-Harbor Procedures for Employers Who Receive a No-Match Letter: Clarification; Initial Regulatory Flexibility Analysis

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Supplemental proposed rule.

SUMMARY: The Department of Homeland Security (DHS) is proposing to amend its regulations that provide a “safe harbor” from liability under section 274A of the Immigration and Nationality Act for employers who follow certain procedures after receiving a notice—from the Social Security Administration (SSA), called a “no-match letter,” or from DHS, called a “notice of suspect document”—that casts doubt on the employment eligibility of their employees. The prior final rule was published on August 15, 2007 (the August 2007 Final Rule).

Implementation of that rule was preliminarily enjoined by the United States District Court for the Northern District of California on October 10, 2007. The district court based its preliminary injunction on three findings. This supplemental proposed rule clarifies certain aspects of the August 2007 Final Rule and responds to the three findings underlying the district court’s injunction.

DATES: Comments must be submitted not later than April 25, 2008.

ADDRESSES: You may submit comments, identified by DHS Docket No. ICEB 2006-0004, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Marissa Hernandez, U.S. Immigration and Customs Enforcement,

425 I St., NW., Suite 1000, Washington, DC 20536. To ensure proper handling, please reference DHS Docket No. ICEB-2006-0004 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.

- *Hand Delivery/Courier:* Marissa Hernandez, U.S. Immigration and Customs Enforcement, 425 I St., NW., Suite 1000, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Marissa Hernandez, U.S. Immigration and Customs Enforcement, 425 I St., NW., Suite 1000, Washington, DC 20536. Telephone: 202-307-0071 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

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I. Public Participation

Interested persons are invited to comment on this rulemaking by submitting written data, views, or arguments on all aspects of the rule. DHS invites comments related to the Initial Regulatory Flexibility Analysis for this rule, including comments suggesting significant alternatives that

might limit any significant economic impact the rule might have on small entities or comments related to the Small Entity Impact Analysis underlying the rule, available on the docket at ICEB-2006-0004-0232. Comments that will most assist DHS will reference a specific portion of this analysis and explain the reason for any recommended change. Include data, information, and the authority that supports the recommended change. Comments previously submitted to this docket do not need to be submitted again.

Instructions for filing comments: All submissions received must include the agency name and DHS docket number ICEB-2006-0004. All comments received (including any personal information provided) will be posted without change to <http://www.regulations.gov>. See **ADDRESSES** above, for methods to submit comments. Mailed submissions may be paper, disk, or CD-ROM.

Reviewing comments: The Small Entity Impact Analysis and public comments may be viewed online at <http://www.regulations.gov> or in person at U.S. Immigration and Customs Enforcement, Department of Homeland Security, 425 I St., NW., Room 1000, Washington, DC 20536, by appointment. To make an appointment to review the docket you must call telephone number 202-307-0071.

II. Background

A. History of the Rulemaking

DHS first published a proposed rule in June 2006 that would have provided means for employers to limit the risk of being found to have knowingly employed unauthorized aliens after receiving a letter from the SSA—known as a “no-match letter”—notifying them of mismatches between names and social security numbers provided by their employees and the information in SSA’s database or after receiving a letter from DHS—called a “notice of suspect document,” that casts doubt on the employment eligibility of their employees. 71 FR 34281 (June 14, 2006). A sixty-day public comment period ended on August 14, 2006.

DHS received approximately 5,000 comments in response to the proposed rule from a variety of sources, including labor unions, not-for-profit advocacy organizations, industry trade groups,

private attorneys, businesses, and other interested organizations and individuals. The comments varied considerably; some commenters strongly supported the rule as proposed, while others were critical of the proposed rule and suggested changes. See www.regulations.gov, docket number ICEB-2006-0004.

DHS published a final rule on August 15, 2007, setting out safe harbor procedures for employers who receive SSA no-match letters or notices from DHS calling into question the information previously provided by their employees when establishing their work eligibility. 72 FR 45611 (Aug. 15, 2007). Each comment received was reviewed and considered in the preparation of the August 2007 Final Rule. The August 2007 Final Rule addressed the comments by issue rather than by referring to specific commenters or comments.

On August 29, 2007, the American Federation of Labor and Congress of Industrial Organizations, and others, filed suit seeking declaratory and injunctive relief in the United States District Court for the Northern District of California. *AFL-CIO, et al. v. Chertoff, et al.*, No. 07-4472-CRB, D.E. 1 (N.D. Cal. Aug. 29, 2007). The district court granted plaintiffs' initial motion for a temporary restraining order against implementation of the August 2007 Final Rule. *AFL-CIO v. Chertoff*, D.E. 21 (N.D. Cal. Aug. 31, 2007) (order granting motion for temporary restraining order and setting schedule for briefing and hearing on preliminary injunction). On October 10, 2007, the district court granted the plaintiffs' motion for preliminary injunction. *AFL-CIO v. Chertoff*, D.E. 135 (N.D. Cal. 2007) (order granting motion for preliminary injunction).

The district court concluded that the plaintiffs had raised serious questions about three aspects of the August 2007 Final Rule. Specifically, the court questioned whether DHS had: (1) Supplied a reasoned analysis to justify what the court viewed as a change in the Department's position—that a no-match letter may be sufficient, by itself, to put an employer on notice, and thus impart constructive knowledge, that employees referenced in the letter may not be work-authorized; (2) exceeded its authority (and encroached on the authority of the Department of Justice (DOJ)) by interpreting the anti-discrimination provisions of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, 100 Stat. 3359 (1986), 8 U.S.C. 1324b; and (3) violated the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, by not

conducting a regulatory flexibility analysis. See *AFL-CIO v. Chertoff*, D.E. 135 (N.D. Cal. Oct. 10, 2007) (order granting motion for preliminary injunction) at 8.

DHS proposes this supplemental rule to address the issues raised by the court in the preliminary injunction order. After addressing these three issues, DHS will seek to have the preliminary injunction dissolved. DHS continues its defense of the case, and this simultaneous rulemaking—which is intended to lead to the rule becoming effective as quickly as possible—is not a concession of any issue pending in the litigation.

In developing this supplemental proposed rule, DHS has considered the administrative record of the August 2007 Final Rule and the record of proceedings in the pending litigation. *AFL-CIO v. Chertoff*, D.E. 129 (N.D. Cal. Oct. 1, 2007) (certified administrative record); D.E. 146-2 (N.D. Cal. Dec. 4, 2007 (*errata*)) (hereafter *AFL-CIO v. Chertoff*, D.E. 129). Accordingly, DHS provides the following clarification to the August 2007 Final Rule and publishes an initial regulatory flexibility analysis.

B. Purpose of the Rulemaking

DHS, and its predecessor agencies, has been aware for many years that employment in the United States is a magnet for illegal immigration, and that a comparison of names and social security numbers submitted by employers against SSA's data provides an indicator of possible illegal employment:

Reducing the employment magnet is the linchpin of a comprehensive strategy to deter unlawful immigration. Economic opportunity and the prospect of employment remain the most important draw[s] for illegal migration to this country. Strategies to deter unlawful entries and visa overstays require both a reliable process for verifying authorization to work and an enforcement capacity to ensure that employers adhere to all immigration-related labor standards.

* * * * *

The Commission concluded that the most promising option for verifying work authorization is a computerized registry based on the social security number; it unanimously recommended that such a system be tested not only for its effectiveness in deterring the employment of illegal aliens, but also for its protections against discrimination and infringements on civil liberties and privacy.

* * * * *

The federal government does not have the capacity to match social security numbers with [Immigration and Naturalization Service (INS)] work authorization data without some of the information captured on the I-9. Congress should provide sufficient time,

resources, and authorities to permit development of this capability.

U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy* 113-14, 117 (1997) (emphasis in original); *AFL-CIO v. Chertoff*, D.E. 129 at 139-140, 143.

Similarly, DHS has been aware of the potential for abuse of social security numbers by aliens who are not authorized to work in the United States. The abuse of social security numbers has been the subject of numerous public reports of the Government Accountability Office and the Inspector General of the Social Security Administration, as well as congressional hearings. See, e.g., *AFL-CIO v. Chertoff*, D.E. 129, at 35-661; Government Accountability Office, Report to the Subcommittee on Terrorism, Technology and Homeland Security, Committee on the Judiciary, U.S. Senate, *Estimating the Undocumented Population: A "Grouped Answers" Approach to Surveying Foreign-Born Respondents* (GAO Rept. No. GAO-06-775, Sept. 2006) (describes alternative means of gathering interview data from undocumented aliens to reduce the "question threat" to some respondents because they fear that a truthful answer could result in negative consequences); Subcommittee on Oversight and Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, *Social Security Number and Individual Taxpayers Identification Number Mismatches and Misuse*, 108th Cong., 2nd Sess., Serial No. 108-53 (March 10, 2004).

The illegal alien population in the United States and the number of unauthorized workers employed in the United States are both substantial. See, e.g., J. Passel, Pew Hispanic Center, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.* (March 2006), found at <http://pewhispanic.org/files/factsheets/17.pdf> (approximately 11.2 million illegal aliens in the United States; approximately 7.2 million illegal aliens in the workforce); with M. Hofer, N. Rytina & C. Campbell, Office of Immigration Statistics, Policy Directorate, U.S. Department of Homeland Security, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2006* (August 2007) found at http://www.dhs.gov/xlibrary/assets/statistics/publications/iill_pe_2006.pdf (estimating unauthorized population of 11,550,000 as of January 2006).

The scale of the problem the rule seeks to address—employment of aliens not authorized to work in the United States—has become more well-defined through the course of the rulemaking and related litigation. The comments submitted in response to the initial proposed rule in 2006 by organizations such as Western Growers, and the public statements by representatives of such organizations, have been bracingly frank:

In the midst of the combusive debate over immigration reform, we in agriculture have been forthright about the elephant in America's living room: Much of our workforce is in the country illegally—as much as 70%.

T. Nassif, “Food for Thought,” *The Wall Street Journal*, Nov. 20, 2007, at A19. See also, Docket ICEB–2006–0004–0145 (August 14, 2006), *AFL–CIO v. Chertoff*, D.E. 129 at 1306 (comments of the National Council of Agricultural Employers, suggesting over 76% of agricultural workers are not authorized to work in the United States). DHS recognizes this critical fact—that many employers are aware that large proportions of their workforce are illegal—and has therefore taken steps within the Department's existing authorities to assist employers in complying with the law.

Public and private studies in the administrative record of this rulemaking make clear that social security no-match letters identify some portion of the population of aliens without work authorization who are illegally employed in the United States. One private study concluded that “most workers with unmatched SSNs are undocumented immigrants.” C. Mehta, N. Theodore & M. Hincapie, *Social Security Administration's No-Match Letter Program: Implications for Immigration Enforcement and Workers' Rights* (2003) at *i*; *AFL–CIO v. Chertoff*, D.E. 129 at 309, 313.

Based on the rulemaking record and the Department's law enforcement expertise, DHS finds that there is a clear connection between social security no-match letters and the lack of work authorization by some employees whose SSNs are listed in those letters. DHS's (and legacy-INS's) interactions with employers who receive no-match letters have consistently shown that employers are also aware that an employee's appearance on a no-match letter may indicate the employee lacks work authorization. Nevertheless, as Mehta, Theodore & Hincapie found, SSA's no-match letters currently “do[] not substantially deter employers from retaining or hiring undocumented

immigrants. Twenty-three percent of employers retained workers with unmatched SSNs who failed to correct their information with the SSA.” C. Mehta, N. Theodore & M. Hincapie, *supra* at *ii*; *AFL–CIO v. Chertoff*, D.E. 129 at 314.

Some employers may fail to respond to no-match letters because they have consciously made the illegal employment of unauthorized aliens a key part of their business model or because they conclude that the risk of an immigration enforcement action is outweighed by the cost of complying with the immigration laws by hiring only legal workers. See C. Mehta, N. Theodore & M. Hincapie, *supra* at 2, 20–30; *AFL–CIO v. Chertoff*, D.E. 129 at 314, 316, 334–44 (noting employer “complaints” over loss of their illegal workforce when employees are asked to correct their SSN mismatches, as well as the practice by some employers of encouraging workers to procure new fraudulent documents to provide cover for their continued employment). DHS's interactions with employers have also shown, however, that many law-abiding employers are unsure what their obligations are under current immigration law when they receive an SSA employer no-match letter, and that some employers fear accused of having violated anti-discrimination laws if they react inappropriately to no-match letters.

In light of these facts, DHS has concluded that additional employer guidance on how to respond to SSA no-match letters will help law-abiding employers to comply with the immigration laws.¹ Accordingly, in the August 2007 Final Rule and in this supplemental proposed rulemaking, DHS outlines specific steps that reasonable employers may take in response to SSA no-match letters, and offers employers who follow those steps a safe harbor from ICE's use of SSA no-match letters in any future enforcement action to show that an employer has knowingly employed unauthorized aliens in violation of INA section 274A, 8 U.S.C. 1324a.

¹ United States citizens and aliens authorized to work in the United States would also receive an ancillary benefit from improved employer compliance with the bar to employment of aliens not authorized to work in the United States and of correction of records with the Social Security Administration. Correction of the SSA's records to properly credit wages to a citizen or alien authorized to work may increase authorized workers' benefits under the Social Security Act and other laws, and improved employer compliance with the laws barring employment of unauthorized alien workers will likely expand the employment opportunities of those authorized to work in the United States.

C. Authority To Amend the Regulation

The supplemental proposed rule responds to the district court's injunction while remaining true to the agency's rulemaking powers. In enacting section 103(a) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1103(a), and section 102(a)(3), (b)(1), and (e) of the Homeland Security Act of 2002, Public Law 107–296, 110 Stat. 2135 (Nov. 25, 2002) (HSA), as amended, 6 U.S.C. 112(a)(3), (b)(1), and (e), Congress has delegated to the Department of Homeland Security the authority to promulgate rules that interpret and fill in the administrative details of the immigration laws. Under *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–45 (1983), the courts afford due deference to agency interpretations of these laws as reflected in DHS's rules. The Executive may, as appropriate, announce or change its policies and statutory interpretations through rulemaking actions, so long as the agency's decisions rest on a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

DHS's authority to investigate and pursue sanctions against employers who knowingly hire or continue to employ unauthorized aliens necessarily includes the authority to decide what evidence it will rely upon in such enforcement efforts. It also includes the authority to decide the probative value of the available evidence, and the conditions under which DHS will commit not to rely on certain evidence. Under the prior regulations, an employer who had received an SSA no-match letter or DHS letter and was charged with knowing employment of unauthorized aliens could defend against an inference that the employer had constructive knowledge of the workers' illegal status by showing that the employer had concluded, after exercising reasonable care in response to the SSA no-match letter or DHS letter, that the workers were in fact work authorized. 8 CFR 274a.1(I)(1) (2007). Those regulations, however, provided no detailed guidance on what steps by the employer would constitute the exercise of reasonable care. In the August 2007 Final Rule—as supplemented by this proposed rule—DHS limits its law enforcement discretion by committing not to use an employer's receipt of and response to an SSA no-match letter or DHS letter as evidence of constructive knowledge for those employers who follow the

procedures outlined in the rule. This limitation on DHS's enforcement discretion is well within the rulemaking powers of the Secretary of Homeland Security. See, e.g., *Lopez v. Davis*, 531 U.S. 230, 240–41 (2001) (upholding categorical limitation of agency discretion through rulemaking). The rule does not affect the authority of the SSA to issue no-match letters, or the authority of the Internal Revenue Service (IRS) to impose and collect taxes, or the authority of DOJ to enforce the anti-discrimination provisions of the INA or adjudicate notices of intent to fine employers.

The ongoing litigation involving the August 2007 Final Rule does not constrain DHS's power to amend the rule. The Executive's amendment to regulations in litigation is a natural evolution in the process of governance. As the United States Court of Appeals for the District of Columbia has noted:

It is both logical and precedented that an agency can engage in new rulemaking to correct a prior rule which a court has found defective. See *Center for Science in the Public Interest v. Regan*, 727 F.2d 1161, 1164–65 (D.C. Cir. 1984); *Action on Smoking and Health v. CAB*, 713 F.2d 795, 802 (D.C. Cir. 1983). Where an injunction is based on an interpretation of a prior regulation, the agency need not seek modification of that injunction before it initiates new rulemaking to change the regulation.

NAACP, Jefferson County Branch v. Donovan, 737 F.2d 67, 72 (D.C. Cir. 1984). See generally *Thorpe v. Housing Auth. of Durham*, 393 U.S. 268, 281–82 (1969).

Finally, the district court enjoined implementation of the August 2007 Final Rule and the issuance of SSA no-match letters containing an insert drafted by DHS. *AFL-CIO v. Chertoff*, D.E. 137 (N.D. Cal. 2007) (preliminary injunction). The injunction did not prohibit further rulemaking by DHS, and indeed the district court subsequently stayed further proceedings in the litigation to allow for further rulemaking. *AFL-CIO v. Chertoff*, D.E. 142 (motion for stay); 144 (statement of non-opposition); 149 (minute order staying proceedings pending new rulemaking) (N.D. Cal. 2007).

D. Clarification of DHS Policy on the Use of SSA No-Match Letters

As indicated in the preamble of the August 2007 Final Rule, employers annually send the Social Security Administration (SSA) millions of earnings reports (W-2 Forms) in which the combinations of employee name and social security number (SSN) do not match SSA records. 72 FR 45612. In certain cases, SSA sends a letter that

informs the employer of the combinations that cannot be matched. SSA sends such letters, commonly referred to as employer “no-match letters,” to employers whose wage report contains more than ten no-matches and where the no-matches represent more than 0.5% of the total W-2s included in the employer's wage report.

There can be many causes for a mismatch, including clerical error and name changes. One potential cause may be the submission of information for an alien who is not authorized to work in the United States and who may be using a false SSN or an SSN assigned to someone else. Because an SSA no-match letter calls into question the accuracy of the identifying information an employer received and submitted for employees, a no-match letter places an employer on notice of the possibility that some of its employees whose SSNs are listed in the letter may not be who they claimed, and may be unauthorized to work in the United States.

U.S. Immigration and Customs Enforcement (ICE) sends a similar letter (currently called a “notice of suspect documents”) after it has inspected an employer's Employment Eligibility Verification forms (Forms I-9) during an investigation audit and has been unable to confirm the validity of an immigration status document or employment authorization document presented or referenced by the employee in completing the Form I-9. Like an SSA no-match letter, a “notice of suspect documents” calls into question the validity of an employee's identifying information, and thus places employers on notice that the subject employees might be unauthorized to work in the United States. Because a “notice of suspect documents” is issued upon ICE's investigation and review of the specific employment authorization documents, receipt of such a notice provides an employer with clear cause to investigate the work authorization status of the employees identified in the notice.

Section 274A(a)(2) of the Immigration and Nationality Act (INA), 8 U.S.C. 1324a(a)(2), states:

It is unlawful for a person or other entity * * * to continue to employ [an] alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment. [Emphasis added.]

The interaction between SSA's no-match letters and the INA's prohibition on “knowing” employment of unauthorized aliens—and the statement in DHS's (and legacy INS's) regulations that employers may be found to have

“constructive notice” of their workers' unauthorized status—has been the subject of repeated inquiries from employers and other interested parties over the past decade. Prior to the release of the August 2007 Final Rule, legacy INS responded through private correspondence to questions about the responsibilities of employers who receive SSA no-match letters by explaining that the INS:

would not consider notice of this discrepancy [between the name and SSN reported by an employee and SSA's records] from SSA to an employer *by itself* to put the employer on notice that the employee is unauthorized to work, or to require reverification of documents or further inquiry as to the employee's work authorization. Whether an employer has been put on notice of an unauthorized employment situation is, however, an individualized determination that depends on all the relevant facts, and there may be specific situations in which SSA notice of an SSN irregularity would either cause, or contribute to, such a determination.

Letter to Littler Mendelson, from D. Martin, General Counsel, Immigration and Naturalization Service (Dec. 23, 1997) (emphasis added), *AFL-CIO v. Chertoff*, D.E. 129 at 3.

This early recorded interpretation was followed by a series of further non-public and non-binding letters. For example, the agency was asked about the significance of an employee's presentation of documents bearing a different name and social security number from that offered during the initial employment verification process, accompanied by a request that the employer correct the employer's records. In response, an attorney for the INS noted that such behavior is “not necessarily” an indication that the employee is not authorized to work in the United States, but that it “constitutes notice to the employer that requires further inquiry by the employer before the employer can accept” the new documentation and make changes in the employment verification record. Letter to Alston & Bird, LLP, from D. Carpenter, Chief, Employer Sanctions and Civil Document Fraud Division, Office of the General Counsel, INS (date illegible), *AFL-CIO v. Chertoff*, D.E. 129 at 6. The letter further advised the employer to inquire further when faced with material changes affecting the core employment verification information, such as the social security number, and noted that the extent of the inquiry would depend on the nature of the change.

Because a complete change in name and number calls into question the identity of the individual presenting the document to be

verified by the employer at the initial completion of the Form I-9, the employer may need to make additional inquiries of the employee in order to make its determination as to the card's genuineness and whether it appears to relate to the employee.

Id. at 7. The letter also pointed out that questions regarding the anti-discrimination provisions of the INA should be addressed to the DOJ Office of Special Counsel. *Id.*

Because such guidance was provided in response to specific questions or to address particular circumstances, the advice offered by DHS and INS officials over the years has varied somewhat in tone and emphasis. Thus, in one letter, the INS Acting General Counsel indicated that mere receipt of a Social Security no-match letter, without any "additional evidence that an employee may not be work authorized," "does not impose any affirmative duty upon the employer to investigate further into the employee's eligibility to work in the United States." Letter to California Farm Bureau Federation, from Michael J. Creppy for Paul W. Virtue, Acting General Counsel, INS, February 17, [illegible], *AFL-CIO v. Chertoff*, D.E. 129 at 9. And in a 1998 letter to a Member of Congress the INS General Counsel noted that there are "many reasons" for mismatches and observed that a "SSA notice of a mismatch does not trigger by itself an obligation to reverify work authorization," while at the same time emphasizing that employers "should take [steps] to reconcile the mismatch with respect to SSA and IRS reporting." Letter to Hon. Robert F. Smith, United States House of Representatives, from Paul W. Virtue, General Counsel, INS, Nov. 19, 1998, *AFL-CIO v. Chertoff*, D.E. 129 at 11.

More recently, one employer sought clarification from DHS on the appropriate course of action in response to a no-match letter. The employer had established a policy instructing their employees to correct mismatches directly with SSA and terminated employees who failed to do so, but had faced objections from "third party organizations" who asked the employer to change this policy and to instead leave any correction of mismatches to the discretion of the employee. *See* Letter from Tyson Foods, Inc. to Hon. Tom Ridge, Secretary, DHS, Dec. 30, 2004, *AFL-CIO v. Chertoff*, D.E. 129 at 21. In response, DHS reiterated the same core points from prior correspondence, and suggested that employer should take "reasonable steps" such as reverification if an employee was unable to resolve a discrepancy to the employer's satisfaction, and that "[i]f the employer remains unsatisfied that

the employee is authorized to work, termination may be appropriate." Letter to Tyson Foods, Inc. from Daniel Brown, Deputy Associate General Counsel, DHS, March 16, 2005, *AFL-CIO v. Chertoff*, D.E. 129 at 23. *See also* Letter to W.E. Welch & Associates, Inc. from Daniel R. Brown, Deputy Associate General Counsel, DHS, March 30, 2005, *AFL-CIO v. Chertoff*, D.E. 129 at 25 (suggesting that employers could take steps similar to those set forth in the safe harbor rule in response to no-match letters).

The common theme running through the agency's correspondence is that while the mere receipt of an SSA no-match letter may not obligate employers to repeat the full I-9 employment verification process, employers cannot turn a blind eye to SSA no-match letters and should perform reasonable due diligence. *See* Redacted letter from Paul W. Virtue, General Counsel, INS, April 12, 1999, *AFL-CIO v. Chertoff*, D.E. 129 at 16, 17 ("We emphasize that although it is incorrect to assume that an SSA discrepancy necessarily indicates unauthorized status, it would be equally incorrect for an employer to assume that in all cases it may safely ignore any possible INA relevance or consequence of SSA discrepancies. * * *. [A]n employer who discovers that its employee has lied on a Form I-9 about any fact is fully entitled to take reasonable steps * * * to ensure that the employee has not also lied about his or her work authorization or anything else on the form, and * * * if it continues the employment without doing so, it is taking a risk that it may be held liable if in fact the employee is not authorized."). The view that (1) SSA no match letters do not, by themselves, establish that an employee is unauthorized, (2) there are both innocent and non-innocent reasons for no-match letters, but (3) an employer may not safely ignore SSA no-match letters, and (4) an employer must be aware of and comply with the anti-discrimination provisions of the INA, remained the government's position after the reorganization of the functions of the INS into DHS. *See, e.g.,* Letter to Hon. John N. Hostettler, from Pamela J. Turner, Assistant Secretary for Legislative Affairs, DHS, August 9, 2004, *AFL-CIO v. Chertoff*, D.E. 129 at 19.

In light of this history, and of the continuing inquiries regarding employers' obligations under current immigration law upon receipt of SSA no-match letters, DHS decided to provide a more comprehensive and public statement of its interpretation of the INA, and to offer a safe harbor for

employers who took specific reasonable steps in response to no-match letters. The August 2007 Final Rule describes an employer's existing obligations under the immigration laws, and the evidentiary use that DHS will make of such letters found in employers' files from either SSA or DHS. The August 2007 Final Rule also specifies step-by-step actions that can be taken by the employer that will always be considered by DHS to be a reasonable response to receiving an SSA no-match letter or DHS letter—a response that will eliminate the possibility that either letter can be used as any part of an allegation that an employer had *constructive knowledge* that it was employing an alien not authorized to work in the United States.

In entering its injunction against the August 2007 Final Rule, however, the district court found that DHS had changed its position on the significance of SSA no-match letters when promulgating that August 2007 Final Rule. While the court acknowledged that the preamble to the August 2007 Final Rule remained consistent with DHS's and INS's prior informal guidance by "assur[ing] employers that 'an SSA no-match letter by itself does not impart knowledge that the identified employees are unauthorized aliens,'" *AFL-CIO v. Chertoff*, D.E. 135 at 13 (N.D. Cal. Oct. 10, 2007) (quoting 72 Fed. Reg. 45616), the court nevertheless concluded that "DHS decided to change course" in the text of the August 2007 Final Rule by "provid[ing] that constructive knowledge may be inferred if an employer fails to take reasonable steps after receiving nothing more than a no-match letter." *Id.* Having identified what it believed to be a change in agency position, the court found the prior August 2007 Final Rule to be arbitrary and capricious for failing to provide a "reasoned analysis" supporting that change.

DHS disagrees with the district court's interpretation of both the correspondence from INS and DHS and the August 2007 Final Rule. DHS also believes the legal test applied by the district court was incorrect. Assuming, however, that the court correctly identified a change in the agency's formal position and that the Administrative Procedure Act imposes a "reasoned analysis" requirement on such changes in agency position above and beyond the ordinary requirements that agency rulemaking reflect a rational connection between the facts found and the agency's decision, DHS has strong reasons for adopting the change in agency policy found by the district court.

The most basic justification for issuance of this rule—and for the “change” in policy found by the district court—is to eliminate ambiguity regarding an employer’s responsibilities upon receipt of a no-match letter. As one organization with nationwide membership commented in response to the initial publication of the proposed rule in 2006:

[d]isagreement and confusion [of an employer’s obligations upon receipt of a no-match letter] are rampant and well-intended employers are left without a clear understanding of their compliance responsibilities. [Organization] members have had substantial concerns regarding whether mismatch letters put them on notice that they may be in violation of the employment authorization provisions of the immigration law, since the Social Security card is one of the most commonly used employment authorization documents.

AFL-CIO v. Chertoff, D.E. 129 at 1295, (comment from National Council of Agricultural Employers, Aug 14, 2006). See also, *id.* at 849 (comment by the National Federation of Independent Business: “Clarification of the employer’s obligation on receiving a no-match letter and the safe harbor provided for in the proposed rule is critical.”).

As noted above, all previous agency guidance took the form of letters responding to individual queries from employers, Members of Congress, or other interested parties; neither the INS nor DHS had ever released any formal statement of agency policy on the issue. In addition, the agency’s correspondence over the years had been heavily caveated, at times even equivocal, and although more recent letters from DHS had more clearly articulated employers’ obligations upon receiving a no-match letter, those letters did not purport to supplant prior statements by legacy INS. In the absence of a clear, authoritative agency position on the significance of no-match letters, employers and labor organizations had been left free to stake out positions on the question that best served their parochial interests, in some cases misconstruing statements in the SSA employer no-match letter aimed at preventing summary firings or discriminatory practices as instead commanding employers to turn a blind eye to the widely-known fact that unauthorized alien workers would often appear on SSA no-match letters. In the face of this ambiguity, well-meaning employers’ responses to SSA no-match letters were also affected by concern about falling afoul of the antidiscrimination provisions of the INA. Thus, employers concluded that

the risks of inaction in the face of no-match letters—with the possibility of being found to have knowingly employed unauthorized workers in violation of INA 274A—was outweighed by the risks of embarking on an investigation after receiving a no-match letter only to face charges of discrimination.

The August 2007 Final Rule was designed to remedy this confused situation, by reminding employers of their obligation under the INA to conduct due diligence upon receipt of SSA no-match letters and by formally announcing DHS’s view that employers that fail to perform reasonable due diligence upon receipt of SSA no-match letters or DHS suspect document notices risk being found to have constructive knowledge of listed employees’ illegal work status. Furthermore, because the constructive knowledge standard applies a “totality of the circumstances” analysis to the facts of a particular case, and so is not reducible to bright-line rules, the August 2007 Final Rule sought to provide greater predictability through a clear set of recommended actions for employers to take, and assured employers that they would not face charges of constructive knowledge based on SSA no-match letters or DHS letters that had been handled according to DHS’s guidelines.

DHS’s position on the evidentiary value of SSA no-match letters in the August 2007 Final Rule, and in this supplemental proposed rulemaking, is also justified by the growing evidence and consensus within and outside government that SSN no-matches are a legitimate indicator of possible illegal work by unauthorized aliens. The SSA Office of the Inspector General (SSA IG) noted that fraud was a significant cause of SSA no-matches, after reviewing earnings-suspense file data for tax years 1999–2000:

[OIG] identified various types of reporting irregularities, such as invalid, unassigned and duplicate SSNs and SSNs belonging to young children and deceased individuals. While * * * there are legitimate reasons why a worker’s name and SSN may not match SSA files * * * the magnitude of incorrect wage reporting is indicative of SSN misuse * * * SSA’s ability to combat SSN misuse is hampered because employers do not routinely use the Agency’s Employee Verification Service (EVS) * * *

Office of the Inspector General, Social Security Administration, *Social Security Number Misuse in the Service, Restaurant, and Agriculture Industries*, Report A–08–05–25–23, at 2–3 (April 2005), *AFL-CIO v. Chertoff*, D.E. 129 at 453. See generally *id.* at 35–661.

DHS’s view—that no-match letters regularly identify unauthorized alien workers—was also overwhelmingly affirmed by those who submitted comments on the proposed rule in 2006. See, e.g., *AFL-CIO v. Chertoff*, D.E. 129 at 866 (comment by U.S. Chamber of Commerce: “It is estimated that annually 500,000 essential workers enter the U.S. to perform much needed labor without work authorization. * * * The proposed regulation will strip needed workers from employers without providing employers with an alternative legal channel by which to recruit to fill the gaps * * *.”); *Id.*, at 874 (comment by Essential Workers Immigration Coalition including same statement); *Id.*, at 850 (comment by National Federation of Independent Business: “a substantial number of workers identified by no-match letters are undocumented immigrants who are unable to provide legitimate social security numbers”); *Id.*, at 858 (comment by Western Growers opposing the rule on grounds that “it would have a most devastating effect on California and Arizona agriculture, where an estimated 50 to 80 percent of the workers who harvest fruit, vegetables and other crops are illegal immigrants”); *Id.*, at 887 (comment by American Immigration Lawyers Association: “[T]he proposed regulation admittedly will ‘smoke out’ many unauthorized workers.”); *Id.*, at 1306 (comment by National Council of Agricultural Employers suggesting that, as a conservative estimate, 76% of agricultural workers are not authorized to work in the United States, that “employers would likely lose a significant part of their workforces,” and that “a substantial number of workers would not return to work” when faced with the requirement to verify work authorization “because they would be unable to do so”). See also *AFL-CIO v. Chertoff*, D.E. 135 at 12 (N.D. Cal., Oct. 10, 2007) (preliminary injunction order, noting that “th[e] Court cannot agree with plaintiffs’ fundamental premise that a no-match letter can never trigger constructive knowledge, regardless of the circumstances”).

SSA’s criteria for sending employer no-match letters also inform DHS’s position in the August 2007 Final Rule and in this supplementary rulemaking. The SSA does not send employer no-match letters to all employers whose tax filings turn up employees with SSN no-matches. Rather, these letters are only sent to employers whose wage reports reveal at least 11 workers with no-matches, and where the total number of no-matches represents more than 0.5%

of the employer's total Forms W-2 in the report. These criteria were adopted by SSA in an effort to balance the efforts to improve the wage reporting process with available agency resources. Taken together, however, DHS believes these criteria limit the recipients of employer no-match letters to employers who have potentially significant problems with their employees' work authorization. Employers with stray mistakes or *de minimis* inaccuracies in their records do not receive employer no-match letters. As a result, DHS finds that employers who receive no-match letters cannot reasonably assume the problems with their payrolls are merely trivial clerical errors, and therefore cannot reasonably simply ignore those letters.

Both pre-existing regulations and consistent case law demonstrate that an employer can be found to have violated INA section 274A(a)(2), 8 U.S.C. 1324a(a)(2), by having constructive rather than actual knowledge that an employee is unauthorized to work. The concept of constructive knowledge appeared in the first regulation that defined "knowing" for purposes of INA section 274a, 8 CFR 274A.1(I)(1) (1990); 55 FR 25,928. As noted in the preamble to that original regulation, that definition of knowledge is consistent with the Ninth Circuit's holding in *Mester Mfg. Co. v. INS*, 879 F.2d 561, 567 (9th Cir. 1989) (holding that when an employer who received information that some employees were suspected of having presented a false document to show work authorization, such employer had constructive knowledge of their unauthorized status when the employer failed to make any inquiries or take appropriate corrective action). See also *New El Rey Sausage Co. v. INS*, 925 F.2d 1153, 1158 (9th Cir. 1991).

Here, the rulemaking record demonstrates that it is widely understood by employers that the appearance of employees' SSNs on an SSA no-match letter may indicate that the employees lack work authorization, the SSA's practice of generating no-match letters focuses those letters on employers that DHS believes have non-trivial error levels in their payrolls, and existing law clearly establishes that employers may be charged with constructive knowledge when they fail to conduct further inquiries in the face of information that would lead a person exercising reasonable care to learn of an employee's unauthorized status. In light of this record, the position DHS articulated in the August 2007 Final Rule—that an employer's failure to conduct reasonable due diligence upon receipt of an SSA no-match letter can, in the totality of the circumstances,

establish constructive knowledge of an employee's unauthorized status—was a reasonable "change" from the statements in prior informal agency correspondence.

E. Anti-Discrimination Provisions of the INA

The preamble to the August 2007 Final Rule explains that employers who adopt the safe-harbor procedures to verify the employee's identity and work authorization must apply them uniformly to all of their employees who appear on employer no-match letters. Failure to do so, the preamble warns, may violate the anti-discrimination provisions of the INA. The preamble further notes that employers who follow the safe harbor procedures set forth in the August 2007 Final Rule uniformly and without regard to perceived national origin or citizenship status will not be found to have engaged in unlawful discrimination. 72 FR 45613–14. The DHS insert prepared to accompany the no-match letter had similar language. *AFL-CIO v. Chertoff*, D.E.7, Exh. C. (N.D. Cal. Aug. 29, 2007).

The district court questioned DHS authority to offer what the court viewed as interpretations—rather than mere restatements—of settled anti-discrimination law, noting that authority for interpretation and enforcement of the INA's anti-discrimination provisions has been entrusted not to DHS but to the DOJ, and concluded that DHS appeared to have exceeded its authority. See *AFL-CIO v. Chertoff*, D.E. 135 at 16 (N.D. Cal. Oct. 10, 2007) (order granting motion for preliminary injunction).

DHS recognizes the jurisdiction of DOJ over enforcement of the anti-discrimination provisions in section 274B of the INA (8 U.S.C. 1324b). As stated in the preamble to the August 2007 Final Rule, "DOJ—through its Office of Special Counsel for Immigration-Related Unfair Employment Practices—is responsible for enforcing the anti-discrimination provisions of section 274B of the INA, 8 U.S.C. 1324b." 72 FR 45,614. The August 2007 Final Rule also stated that DHS's rule "does not affect * * * the authority of DOJ to enforce the anti-discrimination provisions of the INA or adjudicate notices of intent to fine employers." *Id.* DHS does not have the authority to obligate the DOJ or its Office of Special Counsel for Immigration-Related Unfair Employment Practices to a course of action and the August 2007 Final Rule did not purport to make any such obligation. Whether an employer has engaged in unlawful discrimination in

violation of INA 274B is a determination that is made by DOJ through the Office of Special Counsel.

A statement by one agency about the authority of another agency does not, in and of itself, encroach on the authority of that other agency, and DHS's statements in the August 2007 Final Rule were reviewed through an interagency process that was created to improve the internal management of the Executive Branch. Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), as amended by Executive Order 13258, 67 FR 9385 (Feb. 28, 2002), as amended by Executive Order 13422, 72 FR 2763 (Jan. 23, 2007). Nevertheless, in light of the district court's concerns about DHS's possible encroachment into the authority of DOJ, DHS hereby rescinds the statements in the preamble of the August 2007 Final Rule describing employers' obligations under anti-discrimination law or discussing the potential for anti-discrimination liability faced by employers that follow the safe-harbor procedures set forth in the August 2007 Final Rule. For example, DHS is rescinding conclusive statements from the preamble of the August 2007 Final Rule such as "employers who follow the safe harbor procedures * * * will not be found to have engaged in unlawful discrimination." 72 FR 45613–14. DHS will also revisit the language in its insert letter after this rule is finalized. These rescissions do not change existing law or require any change to the rule text. The language added by the August 2007 Final Rule to 8 CFR 274a.1(I)(3) clarifies that a written notice from SSA or DHS calls into question the validity of an employee's identity or work authorization documents, such that those documents may not any longer, "on their face reasonably appear to be genuine and to relate to the individual." That assessment of the presumptive reliability of documents associated with SSA no-match letters or with DHS notices of suspect documents is squarely within the regulatory expertise and authority of DHS.

Employers seeking guidance regarding their anti-discrimination obligations in following the safe harbor procedures in the August 2007 Final Rule, as modified by this supplemental rule, should follow the direction provided by DOJ on the Web site of the Office of Special Counsel for Immigration-Related Unfair Employment Practices. See <http://www.usdoj.gov/crt/osc/index.html>. Employers may also seek advice on a case-by-case basis through OSC's toll-free employer hotline at: 1-800-255-8155. DOJ's public guidance on employers' anti-discrimination

obligations will also be published in a **Federal Register** notice when DHS promulgates this rule as a final rule.

F. Regulatory Flexibility Analysis

As discussed in the preamble of the August 2007 Final Rule, a number of commenters suggested that the rule would have a substantial economic impact on the economy, and on small entities in particular. The preamble indicated, however, that the suggested impact was speculative and that there was no evidence in the record to substantially support the conclusion that the rule would impose significant compliance costs on small entities. This conclusion was based on DHS's view of the August 2007 Final Rule as one that clarified DHS's interpretation of the INA, described how DHS would exercise its prosecutorial discretion, and set forth a voluntary safe harbor—not as a rule that would create any new duties, mandate any new burdens, or impose any new or additional compliance costs on employers. Accordingly, DHS certified that the August 2007 Final Rule would not have a significant economic impact on a substantial number of small entities, and therefore declined to provide a Regulatory Flexibility Analysis. See 72 FR at 45,621 and 45,623.

The district court nevertheless concluded that the safe harbor in the rule amounted to a mandate that effectively created compliance obligations for employers that received no-match letters. Having found the rule to be a mandate rather than a voluntary safe harbor rule, the court found it likely that small businesses would incur significant costs associated with complying with the safe harbor rule:

Because failure to comply subjects employers to the threat of civil and criminal liability, the regulation is the practical equivalent of a rule that obliges an employer to comply or to suffer the consequences; the voluntary form of the rule is but a veil for the threat it obscures. The rule as good as mandates costly compliance with a new 90-day timeframe for resolving mismatches. Accordingly, there are serious questions whether DHS violated the RFA by refusing to conduct a final flexibility analysis.

See *AFL-CIO v. Chertoff*, D.E. 135 at 19 (N.D. Cal., Oct. 10, 2007) (order granting preliminary injunction) (internal quotations and citations omitted). In light of the district court's conclusion that a regulatory flexibility analysis would be required, DHS is providing an initial regulatory flexibility analysis (IRFA) in this supplemental proposed rule, based on economic analysis that is being published in the docket of this rulemaking (ICEB-2007-00xx-0002),

and which is summarized below in section III.B.

DHS's decision to publish an IRFA in this supplemental rulemaking is not a concession that the rulemaking is a "legislative rule." DHS continues to view the August 2007 Final Rule and this supplemental rule as interpretive rules, and does not believe that these rulemakings bear any of the hallmarks of a legislative rule. See *Hemp Industries Ass'n v. Drug Enforcement Admin.*, 333 F.3d 1082, 1087 (9th Cir. 2003) (identifying three circumstances in which a rule is legislative); *Syncore Int'l Corp. v. Shalala*, 127 F.3d 90, 94 (DC Cir. 1997) (interpretive rule "typically reflects an agency's construction of a statute that has been entrusted to the agency to administer" and a statement of policy "represents an agency position with respect to how it will treat—typically enforce—the governing legal norm. By issuing a policy statement, an agency simply lets the public know its current enforcement or adjudicatory approach"). DHS is not invoking its legislative rulemaking authority to mandate a specific action upon a certain event; rather this rulemaking informs the public of DHS's interpretation of Section 274A of the INA and describes how DHS will exercise its discretion in enforcing the INA's prohibition on knowing employment of unauthorized aliens. Moreover, although the district court questioned whether DHS has changed its position on the evidentiary force of no-match letters in enforcement proceedings against employers, neither the August 2007 Final Rule nor this supplemental rulemaking departs from any prior legislative rule. See *Oregon v. Ashcroft*, 368 F.3d 1118, 1134 (9th Cir. 2004). As noted above, the only record of the agency's previous position lies in correspondence between the agency and individuals and employers seeking advice on their specific questions.

Thus, although DHS continues to believe that the Regulatory Flexibility Act does not mandate the analysis that has been undertaken here, see *Central Texas Tel. Coop. Inc. v. FCC*, 402 F.3d 205, 214 (D.C. Cir. 2005), the Department has decided to publish the IRFA and its supporting economic analysis, in response to the preliminary injunction entered by the Northern District of California and in order to allow for public review and comment on the costs that may be incurred by employers who choose to adopt the safe harbor procedures set forth in this rule.

G. Further Interpretation in the August 2007 Final Rule

DHS is proposing to further clarify two aspects of the August 2007 Final Rule. First, the rule instructs employers seeking the safe harbor that they must "promptly" notify an affected employee after the employer has completed its internal records checks and has been unable to resolve the mismatch. After reviewing the history of the rulemaking, DHS believes that this obligation for prompt notice would ordinarily be satisfied if the employer contacts the employee within five business days after the employer has completed its internal records review. DHS emphasizes that an employer does not need to wait until after completing this internal review to advise affected employees that the employer has received the no-match letter and request that the employees seek to resolve the mismatch. Immediately notifying an employee of the mismatch upon receipt of the letter may be the most expeditious means of resolving the mismatch.

Second, plaintiffs in the litigation before the Northern District of California raised a question as to whether under the August 2007 Final Rule an employer could be found liable on a constructive knowledge theory for failing to conduct due diligence in response to the appearance of an employee hired before November 6, 1986 in an SSA no-match letter. When Congress enacted INA section 274A as part of the 1986 Immigration Reform and Control Act, it included a grandfather clause in that legislation exempting workers hired before IRCA's date of enactment from the provisions of section 274A(a)(1) and (a)(2). See Public Law 99-603, section 101(a)(3), 100 Stat. 3359 (1986). Because those statutory bars against hiring or continuing to employ individuals without work authorization do not apply to workers within that grandfather clause, the August 2007 Final Rule, as published and as supplemented by this rulemaking, does not apply to any such workers that may be listed in an SSA no-match letter.

III. Statutory and Regulatory Reviews

A. Administrative Procedure Act

DHS is publishing this proposed rule as a proposed rule in the **Federal Register** as a discretionary request for public comment. The rule is not a legislative rule governed by the notice and comment, or by the delayed effective date provisions of 5 U.S.C. 553.

B. Regulatory Flexibility Act

On the basis of the analysis in section II.F of this preamble, DHS provides below its Initial Regulatory Flexibility Analysis, as described under the Regulatory Flexibility Act, 5 U.S.C. 603(b), (c). A small entity impact analysis is included in the docket and summarized here. This section also describes the alternatives to the proposed rule that DHS has identified and considered in this supplemental rulemaking. As noted above, DHS invites comments related to this Initial Regulatory Flexibility Analysis and the accompanying Small Entity Impact Analysis, including comments on the assumptions underlying that analysis.

(1) Reasons Why the Rule Is Being Considered

As discussed more fully in section I.D, DHS, as well as private employers in general, have become increasingly aware of the potential for abuse of social security numbers by aliens who are not authorized to work in the United States. DHS is responsible for the enforcement of the statutory prohibition against the hiring or continued employment of aliens who are not authorized to work in the United States. INA section 274A(a)(1), (2), 8 U.S.C. 1324a(a)(1), (2); HSA section 101, 6 U.S.C. 111. Given employers' evident confusion regarding how to respond to SSA no-match letters, DHS has concluded that it needs to clarify employers' duties under the immigration laws, and set forth guidance for employers who seek to fulfill their obligation not to hire or employ aliens who are not authorized to work in the United States.

(2) Objectives of, and Legal Basis for, the Proposed Rule

The objective of the August 2007 Final Rule and this supplemental proposed rule is to provide clear guidance for employers on how to comply with the statutory bar against hiring or continuing employment of aliens who are not authorized to work in the United States. INA section 274A(a)(1), (2), 8 U.S.C. 1324a(a)(1), (2). The objective of this statute is to eliminate the "magnet" effect of employment opportunities that induces aliens to enter or remain in the United States illegally. DHS exercises investigative and prosecutorial discretion in enforcing this statute, and this interpretive rule explains how DHS will exercise that discretion, and provides guidance to employers who wish to limit their risk of liability under the immigration laws.

(3) Description of, and Where Feasible, an Estimate of the Numbers of Small Entities to Which the Rule Would Apply

To estimate the small entities affected, DHS uses the generally accepted Office of Management and Budget, Economic Classification Policy Committee, *North American Industrial Classification* (NAIC), pursuant to 44 U.S.C. 3504(e), and the size determinations by the Small Business Administration (SBA) for SBA and other programs. 13 CFR 121.101(a); 121.201; 121.902 (size standards promulgated for SBA programs and applicable to other agency programs). The definition of what constitutes a small business varies from industry to industry and generally depends on either the number of employees working for a business or the amount of annual revenue a business earns.

DHS requested information from SSA to assist in better identifying the number of small entities that could be expected to establish safe-harbor procedures. Specifically, DHS requested that SSA provide the names and addresses of the companies already identified by SSA in its preparation to release no-match letters in September 2007. This raw data would have permitted DHS to conduct research to determine the North American Industry Classification System industry to which the specific companies belonged, to research the annual revenue and/or the number of employees of these companies through standard sources, and thus to apply the appropriate small business size standards. With these analyses, DHS anticipated that it would be able to provide a rough estimate of the number of employers expected to receive a no-match letter that met the SBA's definitions of small businesses.

However, SSA informed DHS that it was unable to provide DHS with the names and addresses of the employers expected to receive a no-match letter, citing the general legal restrictions on disclosure of taxpayer return information under section 6103 of the Internal Revenue Code of 1986, 26 U.S.C. 6103. DHS also approached the Government Accountability Office (GAO) and the Small Business Administration, Office of Advocacy, to seek any data that these agencies might be able to provide, and to consult about the analysis to be included in this IRFA. GAO supplied some additional data, but SBA informed DHS that it had no data—other than general small business census data—that was relevant to this rulemaking and that could assist in our analysis for purposes of this IRFA. Consequently, DHS does not have the

data necessary to determine the precise number of small entities expected to receive a no-match letter.

Nevertheless, SSA was able to provide some general information. SSA provided a table showing a distribution of the number of employers that were slated to receive a no-match letter for Tax Year 2006, according to the number of Form W-2s filed by the employer. As this data did not exclude small entities, DHS believes that the universe of small entities that would have received a no-match letter for Tax Year 2006 is contained within the table that SSA provided. Even though this data did not provide the number of small entities, this data was useful to DHS while conducting the small entity impact analysis contained in the docket. See ICEB-2006-0004-0232, Exhibit A.5. DHS was not able to determine whether the affected small entities will include small businesses, small non-profit organizations, and/or small governmental jurisdictions. Unless there is reason to believe small non-profits or public employers might implement the rule's safe harbor procedures differently from private employers, the cost structure for such entities would be no different from small firms. DHS is unaware of any data to suggest there would be a difference.

(4) Proposed Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule suggests, but does not require, that employers retain records of their efforts to resolve SSA no-match letters. This suggestion is based on the possible need of an employer to demonstrate the actions taken to resolve a Social Security no match if and when ICE agents audit or investigate that employer's compliance with INA section 274A, 8 U.S.C. 1324a. While the rule encourages employers seeking to establish eligibility for the safe-harbor to keep a record of their actions, the rule does not impose any requirement for an employer to make or retain any new documentation or records.

Companies that choose to adopt the safe-harbor procedures in the rule would reasonably be expected to incur costs related to administering and implementing those procedures. Company-level costs could include the labor cost for human resources personnel, certain training costs, legal services, and lost productivity. A detailed analysis of safe-harbor-related costs that companies may incur is available in the docket of this rulemaking. While several commenters to the rule proposed in 2006 expressed concerns about the costs to businesses

relating to the termination and replacement of unauthorized workers, DHS finds that those costs cannot properly be considered costs of this rule. The INA expressly prohibits employers from knowingly hiring or knowingly continuing to employ an alien who is not authorized to work in the United States. If an employer performs the due diligence described in the rule, and loses the services of unauthorized employees as a result, those costs of terminating and/or

replacing illegal workers are attributable to the INA, not to this rule.

Table 1 below, summarizes the average cost per firm that DHS estimates will be incurred by businesses that receive a no-match letter and choose to adopt the safe harbor procedures set forth in this rule. Because DHS does not have adequate data to estimate the percentage of unauthorized employees whose SSNs are listed on no-match letters, for the purpose of this analysis, DHS estimated costs based on various ratios of authorized to unauthorized

workers (i.e. 20% unauthorized—80% authorized). As Table 1 shows, the expected costs of adopting the safe harbor procedures in this rule are relatively small on an average cost per firm basis. In interpreting these costs, these estimates were based on a series of assumptions which are explained in detail in the small entity impact analysis included in the docket. Consequently, the costs a specific firm incurs may be higher or lower than the average firm costs estimated in Table 1.

TABLE 1.—TOTAL COSTS PER FIRM BY EMPLOYMENT SIZE CLASS

Employment size class	Percentage of current no-match employees assumed to be unauthorized				
	10%	20%	40%	60%	80%
5–9	\$3,737	\$3,633	\$3,425	\$3,217	\$3,009
10–19	4,020	3,891	3,634	3,376	3,119
20–49	5,786	5,568	5,132	4,695	4,259
50–99	7,517	7,214	6,606	5,998	5,391
100–499	22,488	21,148	18,469	15,789	13,110
500+	33,759	31,660	27,462	23,265	19,067

Table 1 does not reflect the termination or replacement costs of unauthorized workers. The termination and replacement of unauthorized employees will impose a burden on employers, but INA section 274A(a)(1), (2), 8 U.S.C. 1324a(a)(1), (2), expressly prohibits employers from knowingly hiring or knowingly continuing to employ an alien who is not authorized to work in the United States. Accordingly, costs that result from employers' knowledge of their workers' illegal status are attributable to the Immigration and Nationality Act, not to the August 2007 Final Rule or this supplemental proposed rule, and its provision of a safe harbor. Similarly, any costs incurred by seasonal employers who face difficulties in hiring new employees in the place of unauthorized workers whose SSNs were previously listed on SSA no-match letters are attributable to the Immigration and Nationality Act bar to knowingly hiring workers who are not authorized to work in the United States.

In summary, DHS does not believe that this safe harbor rule imposes any mandate that forces employers to incur "compliance" costs for purposes of the Regulatory Flexibility Act. Even assuming that the safe harbor rule requires certain action on the part of employers that receive no-match letters, DHS does not believe that the direct costs incurred by employers who choose to adopt the safe harbor procedures set forth in this rule would create a significant economic impact when

considered on an average cost per firm basis. To the extent that some small entities incur direct costs that are higher than the average estimated costs, however, those employers could reasonably be expected to face a significant economic impact. As discussed above, DHS does not consider the cost of complying with preexisting immigration statutes to be a direct cost of this rulemaking. Thus, while some employers may find the costs incurred in replacing employees that are not authorized to work in the United States to be economically significant, those costs of complying with the Immigration and Nationality Act are not direct costs attributable to this rule.

(5) Significant Alternatives Considered

DHS has considered several alternatives to the proposed rule. For the most part, however, the alternatives would not provide employers with necessary guidance and assurances against liability under the INA, nor would the alternatives improve employers' compliance with INA section 274A, 8 U.S.C. 1274a.

(a) *No action.* Taking no action to clarify employers' responsibilities under INA section 274A, 8 U.S.C. 1324a, was considered. Taking no action, however, would not resolve any of the problems identified and addressed by this proposed rule. Employers will remain confused and unlikely to act to resolve no-match letters in a manner consistent with their responsibilities under current immigration law, and will continue to

face possible liability based in part on their failure to respond to no-match letters. Employers would continue to employ unauthorized aliens in violation of the INA.

(b) *Specific industry or sector limitations.* DHS considered limiting the proposed rule to specific industries previously noted to be at high-risk of abuse of social security numbers in employment, including agriculture, services and construction. *See, e.g., Social Security Number Misuse in the Service, Restaurant, and Agriculture Industries, supra; AFL-CIO v. Chertoff*, D.E. 129 at 400 (GAO analysis of SSA data noting 17% of ESF filings by eating and drinking places; 10% by construction, and 7% by agriculture), and industry comments, *supra*. DHS also considered promulgating a rule that applied only to critical infrastructure employers because of the increased need to prevent identify fraud by employees in high-risk facilities. None of these alternatives were acceptable because none addresses the larger population of aliens working without authorization. These alternatives would also offer unfairly selective assurances to employers in certain sectors against liability under INA section 274A, while depriving other employers of the same protection. Nor would any of these alternatives reduce the impact specifically on small businesses.

Focusing on the three economic sectors with the most egregious violators of the INA might have had an impact on a significant portion of the alien

population that comes to the United States to work. As discussed more fully in the small entity impact analysis in the docket, the degree to which specific industry sectors violate the bar to employment of unauthorized aliens is, however, speculative. DHS does not have access to the data files indicating the number of employers by industry sector who would receive no-match letters under current SSA policies. DHS requested industry sector specific data from SSA but was informed that SSA does not possess this data. Non-empirical, anecdotal evidence, such as the admissions of the President of the Western Growers' Association, *supra*, that between 50 to 80% of their employees are unauthorized aliens serves as a less reliable indicator than empirical evidence. Even if such anecdotal evidence is sufficient to guide decisions about investigation and enforcement priorities, it is not an adequate basis for limiting the effect of formal agency guidance to a specific sector of the economy.

Partial enforcement tends, moreover, as a matter of experience, to have the effect of redirecting unauthorized workers into un-enforced or under-enforced sectors. And limiting the applicability of the rule to specific industries or sectors would not mitigate the rule's impact on small business. Accordingly, DHS rejected the industry-specific approach as insufficient to accomplish the goal of improving overall employer compliance and reducing the population of aliens illegally working in the United States.

A critical-infrastructure approach provided other benefits, focusing on high-risk facilities and organizations. Critical infrastructure encompasses, however, segments of industries that are not entirely discrete. Focusing on critical infrastructure would have had salutary effects in certain areas, but not overall. Moreover, DHS has already taken, and continues to take, other steps in working with critical infrastructure partners to improve employer compliance with the INA and reduce the employment of aliens not authorized to work in the United States.

(c) *Phased implementation for small employers.* DHS considered phasing in the implementation of the rule by delaying its applicability to small entities, but concluded that such an approach would harm, not help, small employers. Because employers' obligation not to knowingly employ unauthorized workers and the constructive knowledge standard for employer liability flow from the INA, all employers, including small entities, are already subject to those legal

requirements. DHS cannot exempt small entities from the INA, and so delaying the applicability of this rule for small entities would not excuse small employers from their existing legal obligations. Instead, delaying implementation of this rule for small entities would deny them access to the safe harbor protection offered to employers who follow the procedures set forth in this rule, effectively leaving small employers exposed to greater liability risk while offering protection to larger employers.

(d) *Extended time allowance for small employers.* DHS also considered extending the time periods in the rule for employers who wish to obtain the protection of the safe harbor to check their internal records to confirm the no-matches were not the result of some administrative error by the employer. The time allotted for this procedure was extended from 14 days to 30 days in the August 2007 Final Rule, in response to comments from large and small employers. DHS is unaware of any evidence that small businesses, with smaller payrolls, would need more time to review their records than would large organizations with thousands of employees, and DHS concluded that a further extension would not provide small employers with a meaningful benefit.

(e) *Mandatory steps without assurances of safe harbor.* DHS also considered requiring all employers to take specific actions whenever they received a no-match letter and their records indicated that a social security number was used as a verification document in Form I-9 processing. Requiring employers to take affirmative steps to resolve social security no-match letters (as outlined as discretionary steps in the proposed rule) could result in fuller compliance with the bar to employment of aliens who are not authorized to work in the United States. But such a mandatory scheme implies that the steps set forth in the rule are the only reasonable response to a SSA no-match letter, a conclusion that cannot be supported by the evidence currently before DHS. Furthermore, the relative gains from a mandatory scheme, in the absence of additional statutory authority to impose sanctions for violations of that mandate, are likely to be very small. Employers that consciously or recklessly violate the INA will not alter their behavior under either a mandatory or voluntary safe-harbor regime, while responsible employers who want to comply with the INA will benefit from the guidance provided in the proposed safe harbor rule and will improve their

hiring and employment practices to ensure compliance with the INA.

(6) *Duplicate, overlapping or conflicting rules.*

DHS is unaware of any duplicate, overlapping, or conflicting Federal regulations on this subject. DHS would welcome specific comments identifying any such regulations, including specific citations to provisions of Federal regulations that are duplicative, overlap or conflict, with reasons why the commenter believes that such duplication, overlap or conflict exists.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in one year, and it would not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48 (1995), 2 U.S.C. 1501 *et seq.*

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104-121, 804, 110 Stat. 847, 872 (1996), 5 U.S.C. 804(2). This rule has not been found to be likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or foreign markets.

E. Executive Order 12,866 (Regulatory Planning and Review)

Because this rule affected a number of different agencies and provides guidance to the public as a statement of policy or interpretive rule, the final rule was referred to the Office of Management and Budget pursuant to Executive Order 12866, as amended. Multiple agencies reviewed and considered the draft and substantial consultation between agencies occurring during that process. This supplemental proposed rule reflects that consultation.

F. Executive Order 13,132 (Federalism)

This rule 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. Therefore, in accordance with section 6 of Executive Order No. 13,132, 64 FR 43,255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12,988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order No.12,988, 61 FR 4729 (Feb. 5, 1996).

H. Paperwork Reduction Act.

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, all Departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. While employers seeking to establish eligibility for the safe-harbor are encouraged to keep a record of their actions, this rule does not impose any additional information collection burden or affect information currently collected by ICE.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble to the proposed rule at 71 FR 34281 (June 14, 2006) and the preamble to the final rule at 72 FR 45611 (Aug. 15, 2007), and as further explained in the preamble to this supplemental proposed rule, the Department of Homeland Security proposes to repromulgate, without change, the regulations published at 72 FR 45611, as 8 CFR 274a.1(l).

Michael Chertoff,

Secretary.

[FR Doc. E8-6168 Filed 3-25-08; 8:45 am]

BILLING CODE 4410-10-P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AC25

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—Basel Accord

AGENCY: Farm Credit Administration.

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

SUMMARY: The Farm Credit Administration (FCA, Agency or we) is

extending the comment period on our ANPRM that seeks comments to facilitate the development of enhancements to our regulatory capital framework to more closely align minimum capital requirements with risks taken by Farm Credit System (FCS or System) institutions. We are extending the comment period so all interested parties will have additional time to provide comments.

DATES: You may send comments on or before December 31, 2008.

ADDRESSES: We offer several methods for the public to submit comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- E-mail: Send us an e-mail at: reg-comm@fca.gov.
- Agency Web site: <http://www.fca.gov>. Select "Legal Info," then "Pending Regulations and Notices."
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.
- Fax: (703) 883-4477. Posting and processing of faxes may be delayed, as faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or on our Web site at: <http://www.fca.gov>. Once you are in the Web site, select "Legal Info," and then select "Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

You may review copies of comments we receive at our office in McLean, Virginia, or on our Web site at: <http://www.fca.gov>. Once you are in the Web site, select "Legal Info," and then select "Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Laurie Rea, Associate Director, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4232, TTY (703) 883-4434, or

Wade Wynn, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-

5090, (703) 883-4262, TTY (703) 883-4434, or

Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

SUPPLEMENTARY INFORMATION: On October 31, 2007, FCA published a notice in the **Federal Register** seeking public comment to facilitate the development of a proposed rule that would enhance our regulatory capital framework and more closely align minimum capital requirements with risks taken by System institutions. See 72 FR 61568. The comment period is scheduled to expire on March 31, 2008. In a letter dated March 4, 2008, the Federal Farm Credit Banks Funding Corporation, on behalf of the System banks and associations, requested that the Agency extend the comment period until December 31, 2008. In view of the number and the complexity of the questions asked in the ANPRM, we have granted this request. The FCA supports public involvement and participation in its regulatory process and invites all interested parties to review and provide comments on our ANPRM.

Dated: March 21, 2008.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E8-6197 Filed 3-25-08; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 33

[Docket No. 2007-28502; Notice No. 07-09]

RIN No. 2120-AJ06

Airworthiness Standards; Aircraft Engine Standards Overtorque Limits

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the certification standards for aircraft engines to introduce requirements for approval of maximum engine overtorque. This action would add a new engine overtorque test, amend engine ratings and operating limitations, and define maximum engine overtorque for certain turbopropeller and turboshaft engines. The proposed rule is intended to harmonize applicable U.S. and European standards and simplify airworthiness approvals for import and export of aircraft engines.

DATES: Send your comments on or before June 24, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–28502 using any of the following methods:

- *Federal eRulemaking Portal:* Go to: <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to the Docket Operations at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://DocketsInfo.dot.gov>.

Docket: To read background documents or comments received, go to: <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket; or, go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Tim Mouzakis, Engine and Propeller Directorate, Standards Staff, ANE–110, Federal Aviation Administration (FAA), New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7114; facsimile (781) 238–7199; electronic mail “Timoleon.Mouzakis@faa.gov”. For legal questions concerning this

proposed rule contact Vincent Bennett, Federal Aviation Administration, Office of Regional Counsel (ANE–7), New England Region, 12 New England Executive Park, Room 311, Burlington, MA 01803; telephone (781) 238–7044; facsimile (781) 238–7055; electronic mail Vincent.Bennett@faa.gov.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, “General requirements.” Under that section, the FAA is charged with prescribing regulations for promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce, including minimum safety standards for aircraft engines. This regulation is within the scope of that authority because it updates the existing regulations for aircraft engine standards overtorque limits.

Background

Part 33 of Title 14, Code of Federal Regulations (14 CFR part 33) prescribes airworthiness standards for original and amended type certificates for aircraft engines. The European Aviation Safety Agency (EASA) Certification Specification—Engines (CS–E) prescribes corresponding airworthiness standards for the certification of aircraft engines in Europe. While part 33 and the CS–E are similar, they differ in several respects. For applicants seeking certification under part 33 and CS–E, these differences result in additional costs and delays in the time required for certification. In addition, because the CS–E does contain specific standards for the approval of maximum overtorque limits, U.S. aircraft engine manufacturers face additional costs when seeking certification of their

engine designs by the JAA/EASA for export.

Currently, part 33 does not contain explicit standards for a maximum engine overtorque limit. Engine manufacturers apply for and obtain FAA approvals of maximum overtorque limits based on the results of certification engine tests and analysis that did not directly address considerations for maximum overtorque limits.

The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC),¹ through its Engine Harmonization Working Group (EHWG), to provide advice and recommendations on proposed standards for engine overtorque. This proposed rule is based on ARAC's recommendations to the FAA.

General Discussion of the Proposed Rule

The proposed rule would establish a standard for applicants to use in applying for and obtaining approval of a maximum overtorque limit. The proposed rule would harmonize U.S. and European standards for approving engine overtorque transients for turbopropeller and turboshaft engines with free power-turbines. The proposed rule would not permit an overtorque limit for these engines when operating at the 30-second and 2-minute one engine inoperative (OEI) ratings.

This proposed rule addresses a condition that can occur on turbopropeller and turboshaft engines with free power turbines. Sudden changes in the rotorcraft/aircraft blade pitch or power demand, such as an engine failure on a twin engine rotorcraft, can cause a significant decrease in the rotor/propeller speed. For a rotorcraft engine, overtorque conditions may occur during the period the engine is accelerating the rotor system back to normal operating speeds. This NPRM proposes requirements to establish a maximum transient (20 seconds maximum) overtorque limit.

The torque transmitting components in a free turbine engine are typically the turbine blades, disks, shafts, and gears (if an internal gearbox exists). Torque has differing effects on the stress levels in these components. For example, the stresses in turbine blades and disks are dominated by centrifugal loads and, to a lesser extent, by temperature. The effects of gas loads producing torque have a minor effect on total stress in these components. The stress levels of components, such as shafts and gears,

¹ Published in the **Federal Register**, October 20, 1998 (63 FR 56059).

are typically dominated by the amount of torque they are transmitting. Turbine entry temperatures generally have little effect on the stress levels in shafts and gears. Typically, the time spent at maximum steady state temperature and high speed during the endurance test (required by § 33.87) results in higher turbine blade and disk stresses than would occur during a maximum overtorque event. Therefore, when the evidence of the endurance tests can be used to provide the substantiation required during certification, the requirement to run the overtorque test at maximum steady state temperature may be adjusted by other relevant factors.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits,

and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

Currently, the FAA has no clear standards in part 33 for approval of a maximum overtorque limit. Engine manufacturers have obtained FAA approvals based on other certification engine tests and analysis that did not directly address the considerations for the maximum overtorque limit. This has allowed for different interpretations of the data by different FAA offices. Additionally, the Certification Specifications Engines (CS-E) contain specific standards for the approval of maximum overtorque limits. These differences result in additional costs and delays for the U.S. aircraft engine manufacturers when seeking certification of their engine designs by the EASA for export. The new proposed rule will harmonize the U.S. and European engine overtorque requirements, which will eliminate these additional costs and delays.

The FAA estimates there will be no adverse effect as the proposal would combine existing standards found in part 33 into one single standard for overtorque, and, as a result, either reduce costs or impose no net costs on aircraft engine manufacturers. This proposed rule will reduce regulatory barriers by establishing one standard consistent with a similar EASA standard. This benefit would justify its costs and reduce barriers to international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale

of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule merely revises and clarifies FAA rulemaking procedures; the expected outcome is to reduce aircraft engine certification costs. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and has determined that it complies with this Act as it would reduce trade barriers by eliminating the engine-certification-requirement differences related to overtorque between the United States and European regulations.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or

final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$128.1 million in lieu of \$100 million. This proposed rule does not contain such a mandate.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d, and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include

supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD-ROM, mark the outside of the disk or CD-ROM and also identify electronically within the disk or CD-ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
 2. Visiting the FAA's Regulations and Policies Web page at: http://www.faa.gov/regulations_policies/; or
- Accessing the Government Printing Office's Web page at: <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by

calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

List of Subjects

14 CFR Part 1

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 33

Air transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 1 and 33 of Title 14, Code of Federal Regulations (14 CFR parts 1 and 33) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Amend § 1.1 by adding the definition of "Maximum engine overtorque" in alphabetical order, to read as follows:

§ 1.1 General definitions.

* * * * *

Maximum engine overtorque, as it applies to turbopropeller and turboshaft engines incorporating free power-turbines for all ratings except one engine inoperative (OEI) ratings of two minutes or less, means the maximum torque of the free power-turbine rotor assembly, the inadvertent occurrence of which, for periods of up to 20 seconds, will not require rejection of the engine from service, or any maintenance action other than to correct the cause.

* * * * *

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

3. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

4. Amend § 33.7 by adding new paragraph (c)(17) as follows:

§ 33.7 Engine ratings and operating limitations.

* * * * *

(c) * * *

(17) Maximum engine overtorque for turbopropeller and turboshaft engines incorporating free power-turbines.

5. Section 33.84 is added to read as follows:

§ 33.84. Engine Overtorque Test.

(a) If approval of a maximum engine overtorque is sought for an engine incorporating a free power turbine, compliance with this section must be demonstrated by testing.

(1) The test may be run as part of the endurance test requirement of § 33.87. Alternatively, tests may be performed on a complete engine or equivalent testing on individual groups of components.

(2) Upon conclusion of tests conducted to show compliance with this section, each engine part or individual groups of components must meet the requirements of § 33.93(a)(1) and (a)(2).

(b) The test conditions must be as follows:

(1) A total of 15 minutes run at the maximum engine overtorque to be approved. This may be done in separate runs, each being of at least 2½ minutes duration.

(2) A power turbine rotational speed equal to the highest speed at which the maximum overtorque can occur in service. The test speed may not be more than the limit speed of take-off or OEI ratings longer than 2 minutes.

(3) For engines incorporating a reduction gearbox, a gearbox oil temperature equal to the maximum temperature when the maximum engine overtorque could occur in service; and for all other engines, an oil temperature within the normal operating range.

(4) A turbine entry gas temperature equal to the maximum steady state temperature approved for use during periods longer than 20 seconds, other than conditions associated with 30-second or 2-minute OEI ratings. The requirement to run the test at the maximum approved steady state temperature may be waived by the FAA if the applicant can demonstrate that other testing provides substantiation of the temperature effects when considered in combination with the other parameters identified in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

Issued in Washington, DC, on March 20, 2008.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. E8-6148 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2008-0357; Directorate Identifier 2008-NM-005-AD]

RIN 2120-AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Boeing Model 737-300, -400, and -500 series airplanes. This proposed AD would require repetitive inspections for discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, and corrective actions if necessary. This proposed AD results from a report of corrosion damage of the chrome runout on the head side found on all four midspar fuse pins of the nacelle strut. Additionally, a large portion of the chrome plate was missing from the corroded area of the shank. We are proposing this AD to detect and correct discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, which could result in reduced structural integrity of the fuse pins and consequent loss of the strut and separation of the engine from the airplane.

DATES: We must receive comments on this proposed AD by May 12, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

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

www.regulations.gov; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Allen Rauschendorfer, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6432; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0357; Directorate Identifier 2008-NM-005-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to: <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report of corrosion damage of the chrome runout on the head side found on all four midspar fuse pins of the nacelle strut on a Model 737-300 airplane. Additionally, a large portion of the chrome plate was missing from the corroded area of the shank. The airplane had a total of 28,621 flight cycles. This condition, if not corrected, could result in discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, reduced structural integrity of the fuse pins, and consequent loss of the strut and separation of the engine from the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737-54-1044, dated December 10, 2007. The service bulletin describes procedures for

repetitive detailed inspections for discrepancies (cracking, pitting, corrosion, or chrome plate damage) of the fuse pins of the left- and right-side inboard and outboard midspar fittings of the nacelle strut, and corrective actions if necessary. The corrective actions include blending out pitting or corrosion damage, inspecting blended areas to make sure all damage was removed, and repairing or replacing damaged fuse pins with new or serviceable fuse pins.

The compliance time specified in the service bulletin is the latest of the following: Within 180 months from the date of issuance of the original standard certificate of airworthiness or original export certificate of airworthiness, within 180 months from date of previous pin replacement, or within 24 months after the effective date of the service bulletin. The repetitive interval is not to exceed 60 months.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD would affect 616 airplanes of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the inspection in this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be \$197,120, or \$320 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA-2008-0357; Directorate Identifier 2008-NM-005-AD.

Comments Due Date

(a) We must receive comments by May 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737-300, -400, and -500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of corrosion damage of the chrome runout on the head side found on all four midspar fuse pins of the nacelle strut. Additionally, a large portion of the chrome plate was missing from the corroded area of the shank. We are issuing this AD to detect and correct damage of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, which could result in reduced structural integrity of the fuse pins and consequent loss of the strut and separation of the engine from the airplane.

Compliance

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

Repetitive Inspections/Corrective Actions

(f) At the applicable time specified in paragraph 1.E., "Compliance" of Boeing Special Attention Service Bulletin 737-54-1044, dated December 10, 2007; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD: Do a detailed inspection for discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut by doing all the actions, including all applicable corrective actions, in accordance with the Accomplishment Instructions of the service bulletin. Do all applicable corrective actions before further flight. Repeat the inspection at the time specified in paragraph 1.E. of the service bulletin.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Allen Rauschendorfer, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6432; fax (425) 917-6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been

authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Issued in Renton, Washington, on March 19, 2008.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-6106 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 9, and 52

[FAR Case 2007-017; Docket 2008-0002; Sequence 2]

RIN: 9000-AK97

Federal Acquisition Regulation; FAR Case 2007-017; Service Contractor Employee Personal Conflicts of Interest

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are interested in determining if, when, and how service contractor employees' personal conflicts of interest (PCI) need to be addressed and whether greater disclosure of contractor practices, specific prohibitions, or reliance on specified principles would be most effective and efficient in promoting ethical behavior.

DATES: *Comment Date:* Interested parties should submit written comments to the FAR Secretariat on or before May 27, 2008 to be considered in the formulation of any proposed or interim rule.

ADDRESSES: Submit comments identified by FAR case 2007-017, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2007-017" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case 2007-017. Follow the instructions provided to complete the "Public

Comment and Submission Form". Please include your name, company name (if any), and "FAR Case 2007-017" 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 2007-017, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>. Please include your name and company name (if any) inside the document.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925. For information pertaining to status or publication schedules, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 2007-017.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Councils are considering the need for standard PCI clauses or a set of standard PCI clauses, if appropriate, for inclusion in solicitations and contracts as recommended by the Acquisition Advisory Panel's Final Report. The Councils are publishing a related advance notice of proposed rulemaking on the subject of Organizational Conflicts of Interest.

2. The Federal Government is increasingly turning to private contractors to perform a wide array of its work. As a result, contractor employees are increasingly working side-by-side with Federal employees, but are not subject to the same ethical safeguards that have been put in place for Federal employees to ensure the integrity of Government operations. Issues such as financial conflicts of interest, impartiality concerns, misuse of information, misuse of apparent or actual authority, and misuse of property are all areas of potential personal conflicts of interest for contractor employees that could result in harm to the public fisc and loss of public confidence in Government. For an introduction to the potential problems resulting from contractor employees' personal conflicts of interest, see the speech given by the Director of the Office of Government Ethics to the Defense Industry Initiative entitled "Who Are Government Workers and How Can Management Improve Worker Ethical Sensitivity?" at: http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/reports_plans/cusick_speech061407.pdf.

www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/reports_plans/cusick_speech061407.pdf.

3. The Government Accountability Office (GAO) released, on March 7, 2008, GAO-08-169, Defense Contracting: Additional Personal Conflict of Interest Safeguards Needed for Certain DOD Contractor Employees. GAO's reporting objectives, in part, were to assess (1) what safeguards exist to prevent personal conflicts of interest for contractor employees when performing DOD's tasks and (2) whether Government and defense contractor officials believe additional safeguards are necessary. To conduct this review, GAO reviewed conflicts-of-interest laws and policies and interviewed ethics officials and senior DoD leaders regarding applicability to DOD Federal and contractor employees. The public may wish to consider GAO's findings, conclusions, and recommendations regarding additional safeguards for personal conflicts of interest pertaining to contractor employees in providing comments in response to this Notice.

4. The Acquisition Advisory Panel (AAP) was chartered by the Congress at Section 1423 of the Services Acquisition Reform Act (SARA). Relevant portions of the final report of the AAP are located on the Web at <http://acquisition.gov/comp/aap/documents/Chapter6.pdf>. The Panel found that "(t)here is a need to assure that the increase in contractor involvement in agency activities does not undermine the integrity of the Government's decision-making processes" (AAP Final Report, Chapter 6, Finding 7, page 417). The AAP also found that "(m)ost of the statutory and regulatory provisions [addressing PCI] that apply to Federal employees do not apply to contractor employees, even where contractor employees are co-located and work side-by-side with Federal employees and are performing similar functions" (AAP Final Report, Chapter 6, Finding 7, page 418).

5. The AAP concluded that, "in view of the tremendous amount of Federal contracting for services, and particularly in the context of the multisector workforce, additional measures to protect against PCIs by contractor personnel [are] needed" (AAP Final Report, Chapter 6, Recommendation 5-2, page 423). While it concluded that it is not necessary to adopt any new Federal statutes, the AAP was concerned that certain types of contracts, primarily service contracts, might present greater problems than others, and it recommended that the FAR Council should identify those types of contracts where the potential

for PCIs raises a concern. However, the AAP also expressed concern that a blanket application of Government ethics provisions to contractor employees might result in over-regulation with its attendant costs to industry, particularly small businesses.

6. Two recent FAR cases, 2006–007 and 2007–006, have expanded, or propose to expand, general business ethics coverage and requirements in the FAR with respect to contractor entities. The former case was published as a final rule at 72 FR 65873, November 23, 2007, with an effective date of December 24, 2007. It requires employers to post Inspector General (IG) Hotline posters in their places of business, to have a written code of business ethics, and, with the exception of small businesses, to have a formal business ethics training program and internal control system. The latter case was published as a proposed rule at 72 FR 64019, November 14, 2007. The comment period closed on January 14, 2008. The Councils are now reviewing the comments received. FAR Case 2007–006 proposes more mandatory requirements for the business ethics programs. For example, contractors that do not timely report violations of law in connection with a Government contract or subcontract may be subject to suspension or debarment. Neither of these FAR cases specifically addressed personal conflicts of interest for contractor employees working in the Federal workplace.

7. Some Government agencies' approaches are located at the following Web sites:

AGENCY FOR INTERNATIONAL DEVELOPMENT — Conduct of employees: Sections 752.7013 and 752.7027 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr752_07.html.

DEPARTMENT OF ENERGY — Personal conflicts of interest of management and operating contractors: Sections 970.0371–1 through 970.0371–9, and 970.5203–3 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr970_07.html.

ENVIRONMENTAL PROTECTION AGENCY — Personal Conflicts of interest—contracts involving current or former EPA employees: Subpart 1503.6 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr1503_07.html; and section 1552.203–70 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr1552_07.html.

NUCLEAR REGULATORY COMMISSION — Personal conflicts of interest — current or former agency employee involvement: Section

2052.209–70 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr2052_07.html.

B. Solicitation of Public Comment

The Councils are seeking comments and recommendations regarding whether additional regulatory coverage is needed, the suitability of applying other agencies' approaches, or another alternative. The Councils are also interested in industry initiatives in this area, particularly standardized or model non-disclosure agreements.

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. This rule is not a major rule under 5 U.S.C. 804.

Dated: March 19, 2008.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E8–6100 Filed 3–25–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

[FAR Case 2007–018; Docket 2008–0002; Sequence 1]

RIN: 9000–AK98

Federal Acquisition Regulation; FAR Case 2007–018; Organizational Conflicts of Interest

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are seeking information that will assist in determining whether the Federal Acquisition Regulation System's current guidance on organizational conflicts of interest (OCIs) adequately addresses the current needs of the acquisition community or whether providing standard provisions and/or clauses, or a set of such standard provisions and clauses, might be beneficial.

DATES: *Comment Date:* Interested parties should submit written comments to the

FAR Secretariat on or before May 27, 2008 to be considered in the formulation of any proposed or interim rule.

ADDRESSES: Submit comments identified by FAR case 2007–018, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2007–018” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2007–018. Follow the instructions provided to complete the “Public Comment and Submission Form”.

Please include your name, company name (if any), and “FAR Case 2007–018” 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 2007–018, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>. Please include your name and company name (if any) inside the document.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925. For information pertaining to status or publication schedules, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 2007–018.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Councils are considering the need for standard OCI clauses, or a set of standard OCI clauses, if appropriate, for inclusion in solicitations and contracts. The Councils are publishing a related advance notice of proposed rulemaking on the subject of Service Contractor Employee Personal Conflicts of Interest.

2. Organizational and Consultant Conflicts of Interest are addressed in Subpart 9.5, as well as in some agencies' supplements.

3. With the recent increase in the use of contractor employees to perform functions previously performed by Government employees (blended workforce) and the increased consolidation in many sectors of the contractor community, the Councils are seeking to determine if the FAR's current guidance on OCIs adequately

addresses the current needs of the acquisition community or whether providing standard provisions and/or clauses, or a set of such standard provisions and clauses, might be beneficial. A review of agency-specific guidance on OCI's may reveal useful language, tools, and/or training that might be beneficial if expanded Governmentwide. The Councils also believe a review of current available training to contracting officers on the identification and mitigation of OCIs is necessary and should be included, with a gap analysis and recommendations.

4. The Acquisition Advisory Panel (AAP) was chartered by the Congress at Section 1423 of the Services Acquisition Reform Act (SARA). Relevant portions of the final report of the AAP are located on the Web at <http://acquisition.gov/comp/aap/documents/Chapter6.pdf>. The Acquisition Advisory Panel (AAP) found that "the use of contractor employees to perform functions previously performed by Government employees combined with consolidation in many sectors of the contractor community has increased the potential for organizational conflicts of interest" (AAP Final Report, Chapter 6, Finding 6, page 417). The nature of the blended or multisector workforce could potentially distort previously clear distinctions between Government employees and private-sector employees, who often are working side-by-side, and may add complexity to the business ethics landscape for which the acquisition community needs updated guidance.

5. Two recent FAR cases, 2006-007 and 2007-006, have expanded, or proposed to expand, general business ethics coverage and requirements in the FAR with respect to contractor entities. The former case was published as a final rule at 72 FR 65873, November 23, 2007, with an effective date of December 24, 2007. It requires employers to post Inspector General (IG) Hotline posters in their places of business, to have a written code of business ethics, and, with the exception of small businesses, to have a formal business ethics training program and internal control system. The latter case was published as a proposed rule at 72 FR 64019, November 14, 2007, whose comment period closed on January 14, 2008. The Councils are now reviewing the comments received. FAR Case 2007-006 proposes additional mandatory requirements for the business ethics programs. For example, contractors that do not timely report violations of law in connection with a Government contract or subcontract may be subject to suspension or debarment.

6. Other Government agencies' approaches are located at the following Web sites:

AGENCY FOR INTERNATIONAL DEVELOPMENT — Organizational conflicts of interest discovered after award: Section 752.209-71 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr752_07.html.

DEPARTMENT OF EDUCATION — Organizational conflicts of interest: Section 3452.209-70 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr3452_07.html.

DEPARTMENT OF ENERGY — Organizational conflicts of interest: Subpart 909.5 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr909_07.html; and sections 952.209-8 and 952.209-72 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr952_07.html.

DEPARTMENT OF HOMELAND SECURITY — Organizational conflicts of interest: Sections 3052.209-72 and 3052.209-73 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr3052_07.html.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT — Organizational conflicts of interest: Sections 2452.209-70 thru 2452.209-72 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr2452_07.html.

DEPARTMENT OF VETERANS AFFAIRS — Organizational conflict of interest: Subpart 809.5 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr809_07.html; and section 852.209-70 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr852_07.html.

ENVIRONMENTAL PROTECTION AGENCY — Organizational conflicts of interest: Subpart 1509.5 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr1509_07.html; and sections 1552.209-70 thru 1552.209-75 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr1552_07.html.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION — Organizational conflict of interest — Limitation on future contracting: Section 1852.209-71 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr1852_07.html.

NUCLEAR REGULATORY COMMISSION — Organizational conflicts of interest: Subpart 2009.5 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr2009_07.html; and sections 2052.209-71 and 2052.209-72 located at http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr2052_07.html.

B. Solicitation of Public Comment

The Councils are seeking comments on whether additional coverage in this area is needed, the suitability of expanding Governmentwide one or a combination of the agencies' approaches, and whether expanded coverage would enhance the integrity of the Government's decision-making processes.

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. This rule is not a major rule under 5 U.S.C. 804.

Dated: March 19, 2008.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E8-6096 Filed 3-25-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 2007-0048]

RIN 2127-AJ44, RIN 2127-AJ49

Federal Motor Vehicle Safety Standards, Child Restraint Systems; Anthropomorphic Test Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Reopening of comment period.

SUMMARY: This document reopens the comment period on a supplemental notice of proposed rulemaking (SNPRM) to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems." Among other things, the SNPRM proposed to specify procedures the agency would use to position a Hybrid III 10-year-old child dummy and a Hybrid III 6-year-old child dummy in booster seats when conducting FMVSS No. 213 compliance tests. Comments on the SNPRM were due March 24, 2008. The Juvenile Products Manufacturers Association (JPMA) petitioned NHTSA to extend the comment period by a minimum of 60 days to appropriately respond with comments to the notice. We have granted the request to extend the comment period and are reopening the comment period for 45 days.

DATES: Comments must be received by May 12, 2008.

ADDRESSES: You may submit comments (identified by the Docket ID Number above) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Submission of Comments heading of the SNPRM published January 23, 2008. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call Dr. Roger

Saul, Office of Rulemaking (Telephone: 202-366-1740) (Fax: 202-493-2990). For legal issues, you may call Ms.

Deirdre Fujita, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820). You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On January 23, 2008, NHTSA published an SNPRM that, among other things, proposed seating procedures for positioning the Hybrid III (HIII) 10-year-old child dummy and the HIII 6-year-old child dummy in booster seats when the dummies are used in FMVSS No. 213 compliance tests (73 FR 3901; Docket No. 2007-0048). The SNPRM supplemented a notice of proposed rulemaking (NPRM) published on August 31, 2005 that proposed to expand the applicability of FMVSS No. 213 to restraints recommended for children weighing up to 80 pounds, and require booster seats and other child restraints produced for older children to meet performance criteria when tested with the HIII 10-year-old child test dummy (70 FR 51720; DMS Docket No. 21245).¹ The SNPRM provided a 60-day comment period, which ended March 24, 2008.

On March 20, 2008, JPMA petitioned NHTSA to extend the comment period by a minimum of 60 days in order to provide more time to thoroughly evaluate the seating procedures proposed to position the HIII 10-year-old and 6-year-old child dummies in

¹The agency also issued an NPRM that proposed to adopt specifications and performance requirements for the HIII 10-year-old child test dummy into 49 CFR Part 572 (notice of proposed rulemaking published July 13, 2005, 70 FR 40281; Docket No. NHTSA 2004-2005-21247).

booster seats. JPMA noted that CRS manufacturers do not have immediate access to the HIII 10-year-old child dummy, and with additional time will be able to obtain the HIII 10-year-old child dummy and gain familiarity with the seating procedures. JPMA believes that extending the comment period by a minimum of 60 days will provide enough time to complete ongoing testing and evaluation of the new seating procedures, which will in turn lead to more meaningful responses based on real experience and test data.

Agency Decision

The agency is reopening the comment period for the January 23, 2008 SNPRM for 45 days in order to balance the interest of receiving meaningful responses and relevant test data with the interest of completing the rulemaking as soon as possible. The JPMA petition indicated that CRS manufacturers are already involved in activities to test and evaluate the seating procedure. Because these efforts have already begun, we believe a 45-day comment period should provide commenters sufficient time to obtain the HIII 10-year-old child dummy, evaluate the seating procedures for the two child dummies, and gain experience using the test dummies in sled testing of booster seats. It is further noted that the agency will consider comments submitted after the 45-day period to the extent possible.

(Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.)

Issued on March 21, 2008.

Roger A. Saul,

Director, Office of Crashworthiness Standards.

[FR Doc. 08-1072 Filed 3-21-08; 12:20 pm]

BILLING CODE 4910-59-P

Notices

Federal Register

Vol. 73, No. 59

Wednesday, March 26, 2008

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 20, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Wood Education and Resource Center Training Registry.

OMB Control Number: 0596-NEW.

Summary of Collection: The USDA Forest Service is developing an online training information system. The Wood Education Resource Center Training Information System is designed to provide a service to trainers and trainees associated with the primary and secondary forest products industry. It will enable the trainees to locate continuing education training opportunities that will meet the criteria they have established. Providing such training will enhance opportunities for the industry, while helping keep the industry competitive in the world market.

Need and Use of the Information: Collection is voluntary and is conducted for the benefit of the users of the website. Making the information available expedites and encourages learning opportunities for members of the timber industry. Trainers will use this site to register training and promote continuing education within the wood products industry. Upon registration, trainees will be able to access the database to find information about training programs, workshops, and short courses that meet the needs of wood products companies and employees. Trainees will be able to search and save information regarding training courses of interests and create a training profile that will automatically match the trainee to courses.

Description of Respondents: Individuals or households; Businesses or other for-profits; Not-for-profit Institutions.

Number of Respondents: 3,325.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,502

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8-6087 Filed 3-25-08; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Campfire Permit

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Campfire Permit.

DATES: Comments must be received in writing on or before May 27, 2008 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Jason Kirchner, Public Affairs Staff, U.S. Forest Service Pacific Southwest Region, 1323 Club Drive, Vallejo, CA 94592.

Comments also may be submitted via facsimile to (707) 562-9053 or by e-mail to: jdkirchner@fs.fed.us.

The public may inspect comments received at the Forest Service's Pacific Southwest Regional Office during normal business hours. Visitors are encouraged to call ahead to (707) 562-9014 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Jason Kirchner, Pacific Southwest Region, (707) 562-9014. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: California Campfire Permit.

OMB Number: 0596-New.

Type of Request: New.

Abstract: The issuance of the California Campfire Permit by Forest Service and Bureau of Land Management offices in California is a requirement resulting from a formal agreement with the State of California. The agreement outlines fire management responsibilities for each party and results in enhanced cooperation for fire suppression and fire prevention activities across agency boundaries throughout the state. California State law requires individuals to possess a permit to light, maintain, or

use a campfire on the property of another person and also requires individuals to obtain a campfire permit issued under U.S. Forest Service authority for campfires on National Forest System lands. As part of a formal agreement with the State, the U.S. Forest Service, Bureau of Land Management, and the California Department of Forestry and Fire Protection have agreed to issue an interagency campfire permit that meets the intent of the State law.

California Public Resources Code 4433:

Permits Required. A person shall not light, maintain, or use a campfire upon any brush-covered land, grass-covered land, or forest-covered land which is the property of another person unless he first obtains a written permit from the owner, lessee, or agent of the owner or lessee of the property.

If, however, campsites and special areas have been established by the property owner and posted as areas for camping, a permit is not necessary.

A written campfire permit duly issued by or under the authority of the United States Forest Service is necessary for use on land under the jurisdiction and control of the United States Forest Service.

Issuance of the California Campfire Permit will occur in every Forest Service, Bureau of Land Management, and CAL FIRE office in the State that is open to the public. The permit is required for any individual that intends to make a campfire on National Forest System lands or Bureau of Land Management lands. Only one permit is required per year per person. The permit requires individuals to provide their name and address, which is used by designated law enforcement officials to verify that the permit belongs to a responsible individual that is present at a campfire. The information is not otherwise used or maintained for any purpose by the Forest Service or Bureau of Land Management.

The California Campfire Permit is a valuable fire prevention tool that provides firefighting organizations in California an opportunity to educate members of the public on safe and responsible campfire use, and allows agencies to personally provide fire prevention messages to every individual that intends to build or maintain a campfire in the state. Without the Forest Service and Bureau of Land Management participating in the distribution of this permit, those agencies would lose an important fire prevention tool while making it impossible for individuals to comply with state law due to the language in the state law requiring a campfire permit to be issued under U.S. Forest Service

authority for campfires on National Forest System lands.

Estimate of Annual Burden: 5 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 250,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20,833 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

March 20, 2008.

Robin L. Thompson,

Associate Deputy Chief, State & Private Forestry.

[FR Doc. E8-6039 Filed 3-25-08; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta Trinity National Forest, South Fork Management Unit, California Salt Timber Harvest and Fuels Hazard Reduction Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Hayfork District of the Shasta Trinity National Forest is proposing to use vegetation treatments to improve forest health, reduce risks from fire and provide forest products on approximately 1,658 acres within the upper Salt Creek watershed on the South Fork Management Unit of the

Shasta Trinity National Forest. Prescribed treatments are expected to produce approximately 4.8 million board feet or 10,600 hundred cubic feet (ccf) of merchantable sawtimber, and an estimated 4,710 bone dry tons of biomass. The Forest Service will analyze these vegetation treatments within the constraints of the Shasta Trinity National Forest Land and Resource Management Plan, 1995.

The proposed Salt project is in Trinity County, 10 air miles south of Hayfork, California and 3 air miles east of Post Mountain, California. The project area is within the Hayfork Adaptive Management Area (AMA), and Management Area 19, Indian Valley/Rattlesnake, of the Shasta-Trinity Land and Resource Management Plan (USFS 1995, p. 4-64 & 65). Treatment areas in T29N, R11W sections 4-9, T29N, R12W sections 1, 2 and 12, T30N, R11W sections 31 and 32, and T30N, R12W sections 25, 26, 35, and 36 M.D.M.

DATES: Comments concerning the scope of the analysis must be received by April 22, 2008 or 30 days after publication in the **Federal Register**, whichever is later. The draft environmental impact statement is expected in August, 2008 and the final environmental impact statement is expected January, 2009.

ADDRESSES: Please send written comments to Sandy Mack, TEAMS USFS Enterprise Unit, 1801 N. First, Hamilton, MT 59840-3114. Comments may also be submitted by e-mail to: comments-pacificsouthwest-shasta-trinity-yo11abollahayfork@fs.fed.us with "Salt Project" as the subject.

FOR FURTHER INFORMATION CONTACT: Sandy Mack, Project Team Leader, TEAMS USFS Enterprise Unit, 1801 N. First, Hamilton, MT 59840. Phone (406) 375-2638.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the Salt project is fourfold: Improve forest health and resiliency, reduce hazardous fuels conditions and the potential impacts from wildfire to the National Forest and neighboring land, provide timber products, and decommission roads no longer needed for management. Competition for limited water, nutrients and sun in many highly stocked stands in the Salt project area has reduced the vigor, growth and resiliency of the mixed conifer species. Thinning is needed to improve tree resiliency to disturbance factors such as drought, insects, disease, and fires. Conversely, there are some stands in the suitable timber base that are understocked and

are not growing well because of decadence. These stands are not meeting the growth and yield potential for those sites, and will not unless regeneration occurs. Reducing fuels and stocking levels through thinning and regeneration harvests requires the removal of trees, some of which have commercial value. Fuel loadings and excessive ladder fuels have created the potential for crown fire initiation and spread, resulting in fires that can pose a threat to National Forest System lands as well as private land near the Salt project area. Decreasing fuels in the Salt project area is needed to help reduce this threat of wildfire to forest resources and local communities. The Trinity County Community Wildfire Protection Plan (Trinity County Fire Council 2005, p. 61, 62) discusses the need for pre-fire fuel treatment in and around three dispersed residential communities that are all within 3 miles of the Salt project area (Post Mountain—1 mile west, Peanut—3 miles north, and Wildwood—3 miles east). Salt is the sixth in a series of watershed scale projects occurring in a south to north pattern. This project strategically connects fuels treatments from other projects to reduce the ability for crown fire transition and spread that can be a threat to these communities.

Roads can be a major source of sedimentation. Watersheds can be improved and future road maintenance costs reduced by removing this potential sediment source when road access is no longer needed for management activities.

The purpose and need for the Salt project are consistent with Management Plan Goals #3, #10, #11, #34, #35, #36, #39, and #40 Shasta-Trinity Land and Resource Management Plan (USFS 1995, p. 4–5 and 4–6).

Proposed Action

The Salt project would treat approximately 1,658 acres to improve forest health, reduce risks from fire and provide forest products, including:

- 984 acres of Intermediate Thinning from below, 31 units.
- 14 acres of Hand Fuel Treatment, 1 unit.
- 499 acres of Pre-commercial Thinning (plantations), 60 units.
- 103 acres of Intermediate Thinning (shaded fuel break), 1 unit.
- 58 acres of Regeneration Harvest with Green Tree Retention, 4 units.

These treatments are expected to produce approximately 4.8 million board feet (10,600 ccf) of merchantable saw timber and 4,710 tons (bone dry) of biomass. Timber prices are at a 15-year low. For this reason appropriated dollars and service contracts may be

required to complete all the treatments planned.

Additionally, the proposed action would decommission approximately 8 miles of road no longer needed for management activities to improve watershed conditions. Approximately 3.4 miles proposed for decommissioning are “unclassified” roads, meaning they are abandoned or illegally developed roads. The remaining 4.6 miles are classified roads, meaning they are currently maintained and tracked as Forest Service System roads.

The Proposed Action was developed with design features to minimize or eliminate impacts from the vegetation treatments. Some of the design features include:

- Maintenance and reconstruction of 18 miles of roads that will be used to haul timber to reduce potential sedimentation.
- Snags and downed logs greater than 19 inches in diameter at breast height would be left on site for wildlife habitat. Snags felled for safety reasons will be left on site as downed logs.
- Five tons of logs per acre will be retained with a preference to have 4 to 6 logs per acre at the largest available diameter.
- All hardwoods that have a reasonable chance of surviving and thriving after stand treatments will be retained.
- Numerous detailed specifications and restrictions will be fully explained in the environmental impact statement and implemented to assure thinning within the intermittent and ephemeral riparian reserves meet the Aquatic Conservation Strategy Objectives.
- Limited Operating Periods would be applied to avoid direct adverse impacts to spotted owls if territories are occupied.
- Ground disturbing activity will not occur during wet weather conditions.

Responsible Official: The Responsible Official for this project is Donna Harmon, South Fork Management Unit District Ranger, Shasta-Trinity National Forest, P.O. Box 159, Hayfork, CA 96041.

Nature of Decision To Be Made: The District Ranger will decide whether to implement the proposed action, take an alternative action that meets the purpose and need, or take no action.

Scoping Process—Public Comment: In October of 2006 we anticipated an environmental assessment would be prepared for this project and requested input from the public through direct mailings and notice published in the Trinity Journal—a local newspaper. The proposed project was also listed quarterly in the Schedule of Proposed

Environmental Actions (SOPA), a Shasta-Trinity National Forest publication. The U.S. Fish and Wildlife Service (USFWS) was consulted regarding the proposed action and members of the interdisciplinary planning team met with the National Marine Fisheries Service (NOAA Fisheries) and California Regional Water Quality Control Board (North Coast Region) to review the proposed action. Three public comments were received. Based on the initial scoping of the project including interdisciplinary team review, field work, public input and agency consultations, the District has modified the proposal and will prepare an environmental impact statement. A scoping letter for a proposed Environmental Impact Statement was mailed March 19, 2008, to twenty individuals and organizations. In addition, the notice was published in the Trinity Journal—a local newspaper. The proposed project is again listed in the Schedule of Proposed Environmental Actions, a Shasta-Trinity National Forest publication. Although comments are welcome throughout the planning process, providing your comments by April 22, 2008 will allow time for us to consider your input during alternative development and analysis. Information on the proposed action will also be posted on the forest Web site: <http://www.fs.fed.us/r5/shastatrinity/projects>.

Preliminary Issues

Issues identified during initial scoping include economics, how long treatments will be effective, cumulative effects from past management, fish habitat, non-critical spotted owl habitat, wildlife species viability.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Comments submitted during this scoping process should be in writing and should be specific to the proposed action. The comments should describe as clearly and completely as possible any issues the commenter has with the proposal. The scoping process includes:

- (a) Identifying potential issues.
- (b) Identifying issues to be analyzed in depth.
- (c) Eliminating non-significant issues or those previously covered by a relevant environmental analysis.
- (d) Exploring additional alternatives.
- (e) Identifying potential environmental effects of the proposed action and alternatives.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: March 19, 2008.

Donna F. Harmon,
South Fork Management Unit District Ranger,
Shasta-Trinity National Forest.

[FR Doc. E8-5954 Filed 3-25-08; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity To Comment on the Applicants for the Cedar Rapids, IA Area Consisting of Northeast Iowa, Southeast Minnesota, and East Texas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the Cedar Rapids, Iowa area that was open for designation.

- Gulf Country Inspection Service, Inc. (Gulf Country) applied for the Cedar Rapids, Iowa area.

- South Texas Grain Inspection, LLC (South Texas) applied for part of the Cedar Rapids, Iowa area, the east Texas region.

- Mid-Iowa Grain Inspection, Inc. (Mid-Iowa) applied for their current designation in Cedar Rapids, Iowa.

DATES: Comments must be postmarked or electronically dated on or before April 25, 2008.

ADDRESSES: We invite you to submit comments on these applicants. You may submit comments by any of the following methods:

- *Hand Delivery or Courier:* Deliver to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250.

- *Fax:* Send by facsimile transmission to (202) 690-2755, attention: Karen Guagliardo.

- *E-mail:* Send via electronic mail to Karen.W.Guagliardo@usda.gov.

- *Mail:* Send hardcopy to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250-3604.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments and reading any comments posted online.

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Karen Guagliardo at 202-720-7312, e-mail Karen.W.Guagliardo@usda.gov.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 3, 2007, **Federal Register** (72 FR 67885), GIPSA asked persons interested in providing official services in the Cedar Rapids, Iowa area to submit an application for designation.

There were three applicants for the Cedar Rapids, Iowa area comprised of northeast Iowa, southeast Minnesota, and east Texas open for designation: Mid-Iowa, currently designated for the entire area and doing business as InterContinental Grain Inspections in east Texas region, applied for the entire area. Gulf Country, a corporation not currently designated, owned by Tyrone Robichaux, John Shropshire, Eurvin Williams, Pat LaCour, and Dan Williams, applied for the entire area, but stated they would accept no less than the east Texas region. South Texas, a limited liability company not currently designated, owned by Corpus Christi Grain Exchange, Inc., applied for a portion of the east Texas region bounded on the north and east by Maverick, Uvalde, Medina, Bexar, Comal, Guadalupe, Gonzales, Lavaca, and Jackson Counties; and bounded on the south and west by the Texas state line.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above address or at <http://www.regulations.gov>. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Authority: 7 U.S.C. 71-87k.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8-5538 Filed 3-25-08; 8:45 am]

BILLING CODE 3410-KD-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces that 16 facilities now meet the definition of a stockyard under the Packers and Stockyards Act and therefore we propose to post signs identifying these facilities as posted stockyards. The purpose of this notice is to inform stockyard owners and the public of the posting status of all these facilities, and to provide an opportunity to comment on whether the facilities should be posted.

DATES: For the proposed posting of stockyards, we will consider comments that we receive by April 10, 2008.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- E-Mail: Send comments via electronic mail to comments.gipsa@usda.gov.
- Mail: Send hardcopy written comments to H. Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1633-S, Washington, DC 20250-3604.

- Fax: Send comments by facsimile transmission to: (202) 690-2755.
- Hand Delivery or Courier: Deliver comments to: H. Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643-S, Washington, DC 20250-3604.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921 (7 U.S.C. 181-229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term “stockyard” as follows:

* * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

Section 302(b) of the P&S Act requires the Secretary to determine which stockyards meet this definition, and to

notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. After giving notice to the stockyard owner and to the public, the stockyard will be subject to the provisions of Title III of the P&S Act (7 U.S.C. 201-203 and 205-217a) until the Secretary deposes the stockyard by public notice. To post a stockyard, we assign the stockyard a facility number, notify the owner of the stockyard facility, and send an official posting notice to the owner of the stockyard to post on display in public areas of the stockyard. The entire process is referred to as posting. The date of posting is the date on which the posting notices are physically displayed. A facility that doesn't meet the definition of stockyard in the P&S Act isn't posted and therefore isn't subject to provisions of the Packers and Stockyards Act. A posted stockyard can be deposed. We deposit a stockyard when the facility can no longer be used as a stockyard.

This document notifies the stockyard owners and the public that the following 16 facilities meet the definition of a stockyard and that we, therefore, propose to post them. If we do not receive comments about these facilities, we expect that they will be posted by DD/MM/YY. If we receive comments that these facilities do not meet the definition of a stockyard, these facilities may not be posted, or the posting may be delayed while we consider the comments.

Facility number	Stockyard name and location
AL-195	RS Auctions, Clayton, Alabama.
AL-196	Clay County Goat & Poultry Auction, Goodwater, Alabama.
AR-180	King Livestock Goat and Sheep Auction, North Lonoke, Arkansas.
AR-181	G.P. Rivers d.b.a. Rivers Horse Center, Lewisville, Arkansas.
CO-156	Western Slope Cattlemen's Livestock Auction, LLC, Loma, Colorado.
GA-231	Thomas County Stockyards, Inc., Thomasville, Georgia.
MO-288	CRS Sales LLC, Hughlandville, Missouri.
MS-176	Cuevas Auction, Picayune, Mississippi.
NY-176	Howard W. Visscher, Hilltop Dairy Auction, Savannah, New York.
SC-162	Claxton's Auction Co., LLC, Ruffin, South Carolina.
TN-197	Jimmy Brown d.b.a. JB Livestock Auction, Gleason, Tennessee.
TN-198	Wallace P. Mitchell d.b.a. Mitchell's Trade Center & Auctions, Inc., Castalian Springs, Tennessee.
TN-199	Middle Tennessee Sheep and Goat Sale, LLC, Dickson, Tennessee.
TX-350	Hereford Livestock Exchange, Hereford, Texas.
VA-163	Blythe Livestock, LLC, Courtland, Virginia.
WI-150	Turenne Livestock Market, Thorp, Wisconsin.

Authority: 7 U.S.C. 202.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8-6090 Filed 3-25-08; 8:45 am]

BILLING CODE 3410-KD-P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Request for Proposals: Fiscal Year 2008 Funding Opportunity for 1890 Land-Grant Institutions Rural Entrepreneurial Outreach and Development Initiative

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Initial notice of request for proposals.

SUMMARY: Business and Cooperative Programs are administered through USDA Rural Development. USDA Rural Development announces the availability of approximately \$1.5 million in competitive cooperative agreement funds. USDA Rural Development hereby requests proposals from 1890 Land-Grant Universities and Tuskegee University (1890 Institutions) for competitively awarded cooperative agreements for projects that support USDA Rural Development's goals and objectives of providing technical assistance for business creation in economically challenged rural communities, for educational programs to develop and improve upon the professional skills of rural entrepreneurs, and for outreach and promotion of USDA Rural Development's programs in small rural communities with the greatest economic need. Project proposals must be designed to overcome currently identified economic problems and lead to sustainable economic development. Project proposals that address both traditional and nontraditional business enterprises are encouraged. This initiative seeks to create a working partnership between USDA Rural Development and the 1890 Institutions through cooperative agreements. A cooperative agreement requires substantial involvement of the Government agency in carrying out the objectives of the project.

Cooperative agreements will be awarded to the project proposals receiving the highest scores as determined by a peer review panel of USDA employees knowledgeable of the subject matter. Awards will be made to the extent that funds are available. However, USDA Rural Development is

making no commitment to fund any particular project proposal or to make a specific number of awards. Eligible applicants must provide matching funds equal to at least 25 percent of the total project costs.

DATES: Paper copies of applications must be postmarked and mailed, shipped, or sent overnight no later than May 12, 2008, to be eligible for FY 2008 funding. Electronic copies of applications must be received by May 12, 2008, to be eligible for FY 2008 funding. Late applications are not eligible for FY 2008 funding.

ADDRESSES: You may obtain application guides and materials for the 1890 Land-Grant Institutions Rural Entrepreneurial Outreach and Development Initiative (1890 REOD Initiative) at <http://www.rurdev.usda.gov/rbs/oa/1890.htm> or by contacting Edgar L. Lewis, Program Manager, USDA Rural Development, Cooperative Programs, Mail Stop 3252, 1400 Independence Avenue, SW., Washington, DC 20250-3252, telephone: (202) 690-3407, e-mail: edgar.lewis@wdc.usda.gov.

Final paper applications for an 1890 REOD Initiative cooperative agreement may be submitted via the U.S. Postal Service to USDA Rural Development, Attention: 1890 REOD Initiative, Mail Stop 3250, 1400 Independence Avenue, SW., Washington, DC 20250, or via UPS, FedEx, or similar delivery service to USDA Rural Development, Attention: 1890 REOD Initiative, Room 4016, 1400 Independence Avenue, SW., Washington, DC 20250. The telephone number that should be used on FedEx or similar packages is (202) 720-7558.

Submit electronic cooperative agreement applications using the Grants.gov Web site at <http://www.grants.gov>.

FOR FURTHER INFORMATION CONTACT: Edgar L. Lewis, Program Manager, USDA Rural Development, Cooperative Programs, Mail Stop 3252, Room 4204, 1400 Independence Avenue, SW., Washington, DC 20250-3252, Telephone: (202) 690-3407, TDD Federal Information Relay Service: 1-800-877-8339, e-mail: edgar.lewis@wdc.usda.gov, or visit the program Web site at <http://www.rurdev.usda.gov/rbs/oa/1890.htm>.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business—Cooperative Service.

Funding Opportunity Title: 1890 Land-Grant Institutions Rural Entrepreneurial Outreach and Development Initiative (1890 REOD Initiative).

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.856.

Key Dates: Cooperative agreement applications may be submitted on paper or electronically according to the following deadlines.

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than May 12, 2008, to be eligible for FY 2008 funding. Electronic copies must be received by May 12, 2008, to be eligible for FY 2008 funding. Late applications will not be considered for funding.

I. Funding Opportunity Description

This solicitation is issued pursuant to 7 U.S.C. 2204b(b)(4) and Executive Order 13256 (February 12, 2002), "President's Board of Advisors on Historically Black Colleges and Universities."

Several other Federal statutes and regulations apply to project proposals considered for review and to cooperative agreements awarded. These include, but are not limited to:

7 CFR part 15, subpart A:

Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964,

7 CFR part 15b: Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Financial Assistance,

7 CFR part 3015: Uniform Federal Assistance Regulations,

7 CFR part 3017: Governmentwide Debarment and Suspension (Nonprocurement),

7 CFR part 3018: New Restrictions on Lobbying,

7 CFR part 3019: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,

7 CFR part 3021: Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),

7 CFR part 3052: Audits of States, Local Governments, and Non-Profit Organizations.

USDA Rural Development was established under the authority of the Department of Agriculture Reorganization Act of 1994. The mission of USDA Rural Development is to enhance the quality of life for rural Americans by providing leadership in building competitive businesses, including sustainable cooperatives that can prosper in the global marketplace. USDA Rural Development meets these goals by investing financial resources and providing technical assistance to

cooperatives and other businesses located in rural communities and establishing strategic alliances and partnerships that leverage public, private, and cooperative resources to create jobs and stimulate rural economic activity.

The primary purposes of the 1890 REOD Initiative are to encourage 1890 Institutions to provide technical assistance for business creation in economically challenged rural communities, to conduct educational programs that develop and improve upon the professional skills of rural entrepreneurs, and to provide outreach and promote USDA Rural Development programs in small rural communities with the greatest economic need. Project proposals must be designed to overcome currently identified economic problems and lead to sustainable economic development. Project proposals that address both traditional and nontraditional business enterprises are encouraged.

USDA Rural Development will use cooperative agreements with the 1890 Institutions to strengthen the capacity of these communities to undertake innovative, comprehensive, citizen-led, and long-term strategies for community and economic development. The cooperative agreements will be for an outreach and development effort to promote Rural Development programs in targeted underserved rural communities and shall include, but not be limited to:

(a) Developing a business startup program, including technical assistance, to assist new cooperatives and other businesses with new business development, business planning, franchise startup and consulting, business expansion studies, marketing analysis, cash flow management, and seminars and workshops for cooperatives and small businesses;

(b) Developing management and technical assistance plans for:

(1) Assessing cooperative and small business alternatives to traditional agricultural and other natural resource based industries;

(2) Assisting in the development of business plans or loan packages, marketing, or bookkeeping; and

(3) Assisting and training cooperatives and small businesses in customer relations, product development, or business planning and development.

(c) Assessing local community weaknesses and strengths, feasible alternatives to agricultural production, and the necessary infrastructure to expand or develop new or existing businesses;

(d) Providing community leaders with advice and recommendations regarding best practices in community economic development stimulus programs for their communities;

(e) Conducting seminars to disseminate information to stimulate business and economic development in selected rural communities; and

(f) Conducting outreach through the use of computer technology and maintaining an Internet Web presence that links community leaders and residents to available economic development information.

II. Award Information

Type of Award: Cooperative Agreements.

Fiscal Year Funds: FY 2008.

Approximate Total Funding: \$1,500,000.

Approximate Number of Awards: 13.

Approximate Average Award: \$115,000.

Floor of Award Range: None.

Ceiling of Award Range: \$115,000.

Anticipated Award Date: September 26, 2008.

Budget Period Length: 12 months.

Project Period Length: 12 months.

If an applicant is to receive an award that is less than the amount requested, the applicant will be required to modify the application to conform to the reduced amount before execution of the cooperative agreement. USDA Rural Development reserves the right to reduce or de-obligate any award if acceptable modifications are not submitted by the awardee(s) within 10 working days from the date the application is returned to the applicant. Any modification must be within the scope of the original application.

Throughout the project period, USDA Rural Development's continued commitment to advance funds will be conditioned upon evidence of satisfactory progress by the recipient (as documented in certified acceptable quarterly progress and financial reports) and the determination that continued funding is in the best interest of the U.S. Government.

III. Eligibility Requirements

1. Applicant Eligibility

To be eligible for an award under this program, an applicant must:

(a) Be an 1890 Institution which includes: Alabama A&M University, University of Arkansas—Pine Bluff, Delaware State University, Florida A&M University, Fort Valley State University, Kentucky State University, Southern University and A&M College, University of Maryland—Eastern Shore, Alcorn

State University, Langston University, North Carolina A&T State University, Lincoln University (Missouri), South Carolina State University, Tennessee State University, Prairie View A&M University, Virginia State University, West Virginia State University, and Tuskegee University.

Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (e.g. debarment and suspension). Applications from ineligible institutions or persons will be rejected in their entirety. USDA Rural Development will accept only one application per Institution under this program. In the event that more than one application is submitted, the 1890 Institution's president will determine the official application for consideration;

(b) Demonstrate that the personnel assigned to the project have the expertise and experience necessary to fulfill the tasks set forth in the project proposal. Applicants should demonstrate a previous record of successful implementation of similar projects;

(c) Demonstrate expertise in the use of computer technologies to provide technical assistance and access to Internet Web sites; and

(d) Submit a completed application as set forth in Section IV.3.

An applicant may subcontract with organizations not eligible to apply provided such organizations are necessary for the conduct of the project. However, the subcontracted amount may not exceed one-third of the total Federal award.

2. Project Eligibility

To be eligible for an award under this program, an applicant must:

(a) Establish that the project eligible beneficiaries are located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A) with a demonstrated economic need. Eligible beneficiaries must also be located in communities that show significant community support for the proposal,

(b) Provide matching funds equal to at least 25 percent of the total project costs, and

(c) Establish and maintain an Internet Web presence linked to the USDA Rural Development Web site. This Web site should contain links to additional economic development sites that will benefit residents and community leaders.

3. Rural Area Definition

Rural underserved targeted counties/communities must be an area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of Census using the latest decennial census of the United States.

4. Matching Funds

Matching funds may be provided by either the applicant or third party in the form of either cash or in-kind contributions and must be from non-Federal funds. Matching funds must be spent in proportion to the spending of funds received from the cooperative agreement. Applicants must verify that matching funds are available for the time period of the cooperative agreement.

IV. Application Process

1. Application Packages

If an Institution plans to apply using a paper application, application packages, including the required forms for this funding opportunity, may be obtained from <http://www.rurdev.usda.gov/rbs/oa/1890.htm>. If an Institution is having difficulty accessing the forms online, it may contact USDA Rural Development at (202) 690-3407, FAX: (202) 690-2723, or TDD Federal Information Relay Service: 1-800-877-8339. The application forms and instructions may also be requested via e-mail by sending a message with the contact person's name, mailing address, and telephone number to edgar.lewis@wdc.usda.gov. The application forms and instructions will be mailed as quickly as possible. When calling or e-mailing USDA Rural Development, please indicate that you are requesting application forms and instructions for the FY 2008 1890 REOD Initiative.

If an Institution plans to apply electronically, the forms must be obtained from <http://www.grants.gov>.

2. Application Submission

Paper applications must be postmarked and mailed, shipped, or sent overnight no later than May 12, 2008. Electronic copies must be received by May 12, 2008. Late applications will not be considered for funding. The applicant assumes the risk of any delay in proposal delivery. Applicants are strongly encouraged to submit completed applications electronically or via overnight mail or delivery service to ensure timely receipt by USDA Rural Development. Receipt of all applications will be acknowledged

by e-mail. Therefore, applicants are strongly encouraged to provide accurate e-mail addresses. If the applicant does not receive an acknowledgment within 7 workdays of the submission deadline, please contact the program manager. If USDA Rural Development receives your application after the deadline due to: (a) Carrier error, when the carrier accepted the package with guarantee for delivery by the closing date and time, or (b) significant weather delays or natural disaster, you will be given the opportunity to document these problems. USDA Rural Development will consider the application as having been received by the deadline if your documentation meets these requirements and verifies the delay was beyond your control. Applications submitted via facsimile will not be accepted.

An Institution may submit its application in paper or in an electronic format. If a paper application is submitted, a signed original and two copies of the completed application must be submitted. The original and two copies must include all required forms, certifications, assurances, project proposal documents, and appendices; be signed by an authorized representative of the Institution; contain original signatures; and be submitted unbound.

A paper application submitted via the Postal Service must be addressed to USDA Rural Development, Attention: 1890 REOD Initiative, Mail Stop 3250, 1400 Independence Avenue, SW., Washington, DC 20250. A paper application submitted via a commercial carrier such as UPS, FedEx, or similar delivery service must be addressed to USDA Rural Development, Attention: 1890 Initiative, Room 4016, 1400 Independence Avenue, SW., Washington, DC 20250. The telephone number to be used on FedEx or similar packages is (202) 720-7558.

If an application is submitted electronically, the application must be submitted at <http://www.grants.gov>. Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to ensure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

All Federal grant applicants must provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants and cooperative agreements. The DUNS number is required whether an applicant is submitting a paper application or using the governmentwide electronic portal

Grants.gov. A DUNS number is required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003. Please ensure that your institution has a DUNS number. An Institution may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1-866-705-5711 or online at <http://www.dnd.com>.

If an Institution's application does not contain a DUNS number field, please write the DUNS number at the top of the first page of the application and/or include the DUNS number in the application cover letter.

3. Completed Application

To be eligible for funding, an application must contain all of the following elements. Applications that are missing any element or contain an incomplete element will not be considered for funding.

(a) Completed forms.

(1) *Form SF-424*, "Application for Federal Assistance." In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's DUNS number, the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number (EIN), the start and end dates of the project, the Federal funds requested, other funds, including in-kind funds, that will be used as matching funds, congressional districts, an answer to the question, "Is applicant delinquent on any Federal debt?", the name and signature of an authorized representative, the telephone number of the authorized representative, and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for an application to be considered complete.

(2) *Form SF-424A*, "Budget Information—Non-Construction Programs." In order for this form to be considered complete, the applicant must fill out Sections A, B, C, and D. The applicant must include both Federal and matching funds, including in-kind funds.

(3) *Form SF-424B*, "Assurances—Non-Construction Programs." In order for this form to be considered complete, the form must be signed by an authorized official and include the title, name of applicant, and date.

(4) *Form AD-1047*, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."

(5) *Form AD-1049*, "Certification Regarding Drug-Free Workplace Requirements."

(6) *Form SF-LLL*, "Disclosure of Lobbying Activities."

(7) *Form RD 400-1*, "Equal Opportunity Agreement."

(8) *Form RD 400-4*, "Assurance Agreement."

(b) *Letters of support.*

(c) *Table of Contents:* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents. Provide page numbers in the Table of Contents where each evaluation criterion is addressed.

(d) *Project Executive Summary:* A summary of the Project Proposal, not to exceed one page, must briefly describe the project, including goals, tasks to be completed, and other relevant information that provides a general overview of the project.

(e) *Eligibility Discussion:* A detailed discussion, not to exceed four pages, will describe how the applicant meets the eligibility requirements. In the event that more than four pages are submitted, only the first four pages will be considered. The eligibility discussion must address the following:

(1) *Applicant Eligibility:* The applicant must first confirm it is an 1890 Institution. It must demonstrate that the personnel assigned to the project have the expertise and experience necessary to fulfill the tasks set forth in the project proposal, including the use of computer technologies and technical assistance.

(2) *Project Eligibility:* The applicant must describe how the project's eligible beneficiaries are located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A) with a demonstrated economic need and how eligible beneficiaries are also located in communities that show significant community support for the proposal. The applicant must show how it is to provide matching funds equal to at least 25 percent of the total project costs. The applicant must provide the address of the Internet Web presence linked to the USDA Rural Development Web site or demonstrate how such a link will be developed.

(f) *Project Proposal:* The application must contain a narrative statement describing the nature of the proposed project. Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in

narrative form. The proposal must include at least the following:

(1) *Project Title Page:* The Title Page must include the title of the project, names of principal investigators, and applicant organization.

(2) *Introduction:* A concisely worded justification or rationale for the proposal must be presented. Summarize the social and economical statistical data (income, population, employment rate, poverty rate, educational attainment, etc.) for the project area that substantiates the need for the initiative. Specify whether the target area includes a federally designated Empowerment Zone/Enterprise Community, Champion Community, Federally-recognized Indian Reservation, or other federally declared economic disaster area. An applicant must address the "Economic Need of Community" evaluation criterion as described in Section VII.1.(c).

(3) *Workplan:* Discuss the approach (strategy) to be used in carrying out the proposed project outreach and achieving the proposed objectives. Address the "Statement of Work" evaluation criterion as described in Section VII.1.(e). A description of any subcontracting arrangements to be used in carrying out the proposed project must be included. The workplan also must include:

(i) *Overview:* Identify and discuss the specific goals and objectives of the proposed project and its impact on the proposed beneficiaries;

(ii) *Timeframes:* Develop a tentative timeline for completing the major tasks outlined in the project proposal;

(iii) *Project Outcomes/Impacts:* Describe and quantify the expected outcomes/impacts of the proposed project, including the businesses created, professionals trained, jobs created or assisted, conferences and seminars to be conducted, and the expected number of participants, loans packaged, etc.;

(iv) *Recipient Involvement:* Identify the person(s) responsible for performing the project tasks; and

(v) *USDA Rural Development Involvement:* Identify proposed USDA Rural Development responsibilities for assisting and monitoring project tasks;

(4) *Budget Narrative:* Provide a detailed budget justification, showing both Federal and applicant's matching funds, including in-kind contributions. Provide a budget to support the workplan, showing all sources and uses of funds during the project period. Detail and document both cash and in-kind funding by sources. Note that only goods and services for which no expenditure is made can be considered

in-kind. If the applicant is paying for the goods and services as part of the matching funds contribution, the expenditure is considered a cash match and should be verified as such.

(5) *Certification of Matching Funds:* Certify that matching funds will be available at the same time Federal funds are anticipated to be spent and that matching funds will be spent on a pro rata basis with Federal funds. Please note that this certification is a separate requirement from the verification of Matching Funds requirement.

(6) *Leveraging Funds:* Discuss in narrative form how the Institution will use Federal, State, private, and other sources of funds and resources to leverage the proposed project.

(7) *Coordination and Management Plan:* Describe how the project will be coordinated among the various participants, the nature of the collaborations and benefits to participants, communities, applicants, and Rural Development. Describe plans for the management of the project to ensure its proper and efficient administration. Discuss any steering committees and/or Agreements developed to assist with managing the project. Describe the proposed scope of Rural Development's involvement in the project.

(8) *Technology Outreach:* The project proposal must address the applicant's ability to deliver computer technology to the targeted rural communities and maintain computer Internet Web sites linking community leaders and residents to available economic development information. Address the "Digital Technology Outreach" evaluation criterion as described in Section VII.1.(f).

(9) *Key Personnel Support:* The roles and responsibilities of key personnel used to carry out the goals and objectives of the proposal should be clearly described. An abbreviated curriculum vitae should be provided for all key personnel.

(10) *Facilities or Equipment:* Identify where the project will be located (housed) and what additional equipment is needed or already available to carry out the specific objectives of the project.

(11) *Previous Accomplishments:* Summarize the Institution's previous outreach and development accomplishments, including success stories from previous years for projects funded by USDA Rural Development or similar outreach or development experiences. First-time applicants should discuss previous similar outreach accomplishments. Address the "Previous Accomplishments"

evaluation criterion as described in Section VII.1.(d).

(12) *Local and USDA Rural Development State Office Support*: Provide letters of support from the local community, such as businesses, educational institutions, local governments, community-based organizations, etc. Letters of support should demonstrate commitments for tangible resources and/or assistance. Include any letter from the appropriate USDA Rural Development State Office, evidencing its input to the proposal or other involvement. Identify and discuss tangible support contained in the letters. Evaluation points will be based on the quality (tangible support) of the letters, not quantity.

(13) *Additional Information*: Provide any additional information that demonstrates commitment for tangible resources and/or that supports the proposal. Additionally, the applicant is encouraged to provide any strategic plan that has been developed to assist cooperative and business development or entrepreneurship for the targeted communities.

V. Intergovernmental Review of Applications

Executive Order (EO) 12372 does not apply to this program.

VI. Funding Restrictions

Public Law 110–161, Section 705, states “No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total cost of the agreement when the purpose of such cooperative arrangement is to carry out programs of mutual interest between the two parties.” Indirect costs in excess of 10 percent of the direct cost, therefore, will be ineligible for funding. Cooperative agreement funds may not be used to:

1. Pay for the preparation of the application;
2. Fund political activities;
3. Pay costs incurred prior to the effective date of this agreement;
4. Provide for revolving funds;
5. Purchase, rent or install fixed equipment;
6. Purchase real estate;
7. Repair or maintain privately owned vehicles;
8. Plan, repair, rehabilitate, acquire, or construct a building;
9. Conduct any activities where there is or may appear to be a conflict of interest; or

10. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

VII. Application Review

1. Criteria

Project proposals will be evaluated using the following seven criteria. Each criterion is given the weight value shown with total points equal to 100. The points assigned provide an indication of the relative importance of each section and will be used by the reviewers in evaluating the proposals. Points do not have to be awarded for each criterion. After all proposals have been evaluated, the Administrator may award an additional 10 discretionary points to any proposal to obtain the broadest geographic distribution of the funds, ensure a broad diversity of project proposals, or ensure a broad diversity in the size of the awards.

(a) *Support of Local Community (Up to 10 points)*: This criterion evaluates the support of local government, educational, community, and business groups. Higher points will be awarded for proposals demonstrating broad support from all components of the communities served, particularly cooperative groups. Broad support is demonstrated by tangible contributions, such as providing volunteers, computers, and transportation or co-sponsoring workshops and conferences. Points will be awarded based on the level of tangible contribution in comparison to the size of the award. Tangible support must be stated in letters from supporting entities.

(b) *Matching Funds/Leveraging (Up to 10 points)*: This criterion evaluates the extent to which the Institution has the capacity to support the project with matching funds and leveraging additional funds and resources from State, private, public, and nonprofit sources to carry out this outreach and development initiative.

A maximum of 10 points will be awarded based upon the amount the proposal exceeds the minimum 25 percent matching requirement. Applicants will be required to provide matching funds in support of this project. Evidence of matching funds availability must be provided. Funds or equivalent in-kind funding must be available at the time at which the cooperative agreement is entered. Matching funds points will be awarded as listed below:

- >25 percent to 35 percent match—2 points.
- >35 percent to 50 percent match—5 points.

>50 percent to 75 percent match—7 points.

>75 percent match—10 points.

(c) *Economic Need of Community (Up to 15 points)*: This criterion evaluates the economic need of the targeted communities.

Five points will automatically be awarded to project proposals with at least one of the beneficiary communities located in a targeted community(s): Federally designated Empowerment Zones, Enterprise Communities, Champion Communities, Federally-recognized Indian Reservations, and other federally declared economically depressed or disaster areas. The application must state the name(s) and location(s) of the economically depressed community(s) and the type(s) of targeted community designation (i.e., Empowerment Zone).

Up to a maximum of 10 additional points may be awarded based upon the applicant's ability to identify and demonstrate other economic factors that would cause these communities to be targeted for special economic and community development, such as, but not limited to, unemployment rates, poverty rates, education levels, and job availability. These and other factors will be evaluated and compared to the respective State rates. An applicant must provide sufficient information for the panel to properly evaluate and rate this criterion.

(d) *Previous Accomplishments (Up to 10 points)*: This criterion evaluates the applicant's previous accomplishments with this initiative and/or its demonstrative capacity to conduct similar projects.

One point will be awarded to an Institution for each year it has been awarded a cooperative agreement under this program up to a total of 5 years. An applicant must provide evidence of satisfactorily completing the cooperative agreement for each year for which credit is claimed. Satisfactorily completing the cooperative agreement includes, completing all objectives in the workplan, submitting all required program and financial reports in a timely manner, and within budget for the project. Applicants with less than 5 recent years of awards in this program may receive up to the maximum 5 points by highlighting the applicant's previous performance in each of the past 5 years on other projects with cooperative and business development and outreach objectives. The applicant should discuss the potential impact of the project upon the targeted underserved rural communities, as well as describing previous similar outreach and development work.

Up to a maximum of 5 additional points may be awarded based upon an applicant's ability to document the positive impact of its project upon the targeted underserved rural communities. Positive entrepreneurial developments should be emphasized. Points will be awarded to applicants who demonstrate that the project's technical assistance resulted in the creation of a business(s) in an economically challenged community or that its educational programs developed or improved upon the professional skills of rural entrepreneurs. The applicant must provide specific information as to the specific businesses created and/or professional educational programs offered.

(e) *Statement of Work (Up to 35 points)*: This criterion evaluates the degree to which the proposed project addresses the major purposes for the 1890 REOD Initiative. Points will be awarded according to the degree to which the Statement of Work reflects: (1) Innovative strategies for providing technical assistance for business creation in economically challenged rural communities, (2) educational programs that develop and improve the professional skills of rural entrepreneurs, and (3) outreach and promotion of USDA Rural Development programs.

Up to a maximum of 15 points will be awarded to proposed projects that have a clearly and concisely stated workplan detailing goals and objectives, timetables, expected results, and measurable outcomes for providing technical assistance for business creation in economically challenged rural communities. The greatest number of points will be awarded to those proposed projects that demonstrate innovative and creative ways to accomplish these goals.

Up to a maximum of 10 additional points will be awarded to proposed projects that have a clearly and concisely stated workplan detailing goals and objectives, timetables, expected results, and measurable outcomes for educational programs to develop and improve the professional skills of rural entrepreneurs (i.e., sustainable agricultural practices, real estate sales, real estate appraising, accounting for small entrepreneurs, etc.). The greatest number of points will be awarded to those proposed projects that demonstrate innovative and creative ways to accomplish these goals.

Up to a maximum of 10 additional points will be awarded to proposed projects for outreach and promotion of USDA Rural Development's programs in

small rural communities with the greatest economic need. The greatest number of points will be awarded to those proposed projects that demonstrate innovative and creative ways to accomplish these goals.

All proposals must integrate substantial USDA Rural Development involvement.

(f) *Digital Technology Outreach (Up to 10 points)*: This criterion evaluates the applicant's experience and capacity to provide outreach and assistance to targeted underserved rural communities through use of computer technologies.

A maximum of 10 points will be awarded based upon the applicant's demonstrated capacity to promote innovations and improvements in the delivery of computer technology benefits, including a Web presence to underserved rural communities whose share in these benefits is disproportionately low. The Web site should be operational with a link to the USDA Rural Development Web site and populated with success stories and economic development information.

(g) *Coordination and Management of the Project (Up to 10 points)*: This criterion evaluates the applicant's demonstrated capacity to coordinate and manage the proposed project among the various stakeholders.

Up to a maximum of 5 points will be awarded based upon the applicant's ability to demonstrate a broad and collaborative involvement with the respective USDA Rural Development State Office on the proposed project. This involvement and collaboration should include, but not be limited to: (1) Evidence of any USDA Rural Development State Office input in and review of the applicant's proposal, (2) a detailed plan for the USDA Rural Development State Office's continued participation in the proposed project that includes specific participatory tasks, and (3) a detailed plan as to how Rural Development programs can be integrated into the proposed project.

Up to a maximum of 5 additional points will be awarded based upon applicant's demonstrated ability for overall management of the project, which include submitting timely program and financial reports, and completing workplan goals/objectives as stated in the proposal. Applicants must document in the proposal that all required reports have been submitted.

2. Selection Process

Each application will be evaluated in a two-part process. First, each application will be reviewed to ensure that both the applicant and project meet the eligibility requirements set forth in

Section III. All applicants determined to be eligible will be scored based upon the criteria set forth in Section VII.1. Each eligible application will be scored by at least three expert reviewers. The individual scores for each application will be tallied, and applications receiving the highest scores will be recommended to the Administrator or Acting Administrator, Rural Business-Cooperative Service, for award. The Administrator or Acting Administrator has the final authority to award discretionary points in accordance with Section VII.1. and determine the applications to be funded. If a tie score results after the proposals have been rated and ranked, the tie will be resolved by the proposal with the largest matching funds as a percent of the total project cost.

VIII. Award Administration

1. Award Notification

Upon completion of the review process, successful applicants will be notified, in writing, by the USDA Rural Development National Office of its award. Each successful applicant will receive a cooperative agreement for signature by the Institution's president or designee. The document will become binding upon execution by the appropriate USDA official.

Unsuccessful applicants will be notified, in writing, of the results of the review.

2. Advance of Funds Requirements

Requests for advance of funds must be submitted to the National Office on a quarterly basis on a completed Form SF-270, "Request for Advance or Reimbursement." A completed Form SF-269 (Long Form), "Financial Status Report," must be submitted with each advance of funds request.

3. Project Reviews

USDA Rural Development State Office representatives will conduct semiannual onsite reviews of award recipients, as well as any additional reviews deemed necessary by the National Office.

4. Reporting Requirements

During the term of the cooperative agreement, each award recipient must submit quarterly progress reports and a final report detailing the tasks performed and results accomplished to the National and appropriate State Offices. The report should also include a summary at the end of the report with the following elements to assist in documenting the annual performance measures of the 1890 program:

(a) Number of businesses/cooperatives started/expanded in the targeted areas;

(b) Number of currently active businesses/cooperatives in the targeted areas that were assisted;

(c) Number of individuals/businesses/cooperatives/organizations assisted (training, technical assistance, feasibility studies, etc.); and

(d) Number of individuals/businesses/cooperatives/organizations assisted with USDA Rural Development loan or grant programs or other similar programs.

Quarterly reports must be submitted on or prior to January 31, April 30, July 31, and October 31, 2009. A final report must be submitted within 90 days of the date of the project's completion. Reports may be submitted in hard copy original or an electronic copy that includes all required signatures. Failure to submit satisfactory, timely reports may result in suspension or termination of current award and/or result in making your institution ineligible for future awards from this program.

Upon the request of USDA Rural Development, the award recipient will submit manuscripts, videotapes, software, or other media identified in project proposals. USDA Rural Development retains those rights delineated in 7 CFR 3019.36.

5. Administrative Requirements

Award recipients are responsible for:

(a) Completing the objectives defined in the proposed workplan.

(b) Maintaining up-to-date project records during the term of the agreement.

(c) Maintaining an accounting of Federal and matching fund expenditures, including in-kind contributions. Award recipients must submit to the National Office a completed Form SF-269 (Long Form) with each advance of funds request and within 90 days of the project's completion.

(d) Immediately refunding to USDA Rural Development, at the end of the agreement, any balance of unobligated funds received from USDA Rural Development.

(e) Providing matching funds or equivalent in-kind contribution in support of the project, at least to the level agreed to in the accepted proposal.

(f) Participating in the annual or biannual USDA Rural Development Entrepreneurship and Information conferences/workshops when planned.

(g) Developing a program of cooperative and business startup and technical assistance, in cooperation with local businesses, that will assist with new company development, business planning, new enterprise, franchise startup and consulting, business expansion studies, marketing

analysis, cash flow management, and seminars and workshops for cooperatives and small businesses.

(h) Providing office space, equipment, and supplies for all personnel assigned to the project.

(i) Developing management and technical assistance plans in cooperation with the USDA Rural Development State Office that will:

(1) Assess cooperative and small business alternatives to agriculture and other natural resources-based industries;

(2) Assist in the development of business plans and loan packages, marketing, bookkeeping assistance, and organizational sustainability; and

(3) Provide technical assistance and training, in cooperation with the USDA Rural Development State Office, for customer relations, product development, and business planning and development.

(j) Assess local community needs, weaknesses and strengths, feasible alternatives to agriculture production, and the needed infrastructure to expand or develop new or existing businesses. The plans for any such studies must be submitted to the USDA Rural Development National Office for approval prior to the study being conducted.

(k) Provide community leaders with advice and recommendations, in cooperation with the USDA Rural Development State Office, regarding best practices in community economic development stimulus programs for their communities.

(l) Develop digital technology outreach and establish and maintain an Internet Web site to link community leaders and residents to available economic development information. USDA Rural Development must be included in the link to economic development information.

(m) Assure and certify that it is in compliance with, and will comply in the course of the agreement with, all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out in 7 CFR parts 3015 and 3019.

(n) Use Federal funds only to pay meeting-related travel expenses when employees are performing a service of direct benefit to the Government and in direct furtherance of the objectives of the proposed agreement. Federal funds cannot be used to pay non-Federal employees to attend meetings.

(o) Not commingle or use program funds for administrative expenses to operate an intermediary relending program (IRP).

(p) Submit to USDA Rural Development National Office, in

writing, any request for revising the project work plan, including key personnel changes, budget reallocations, or requesting a no-cost extension amending the cooperative agreement.

(q) Assist the USDA Rural Development State Office in conducting a semiannual on-site review of the recipient's project.

(r) Collaborate, as needed, with the USDA Rural Development National and State Offices in performing the tasks in the agreement and providing the Rural Development National Office with the information necessary for the Agency to fulfill its responsibilities in the agreement.

(s) Sign an Agency approved Cooperative Agreement.

USDA Rural Development is responsible for:

(a) Monitoring the program as it is being implemented and operated, including monitoring of financial information, to ensure that there is no commingling or use of program funds for administrative expenses to operate an IRP or other unapproved items.

(b) Terminating activity, after written notice, if tasks are not met.

(c) Reviewing and approving in writing, any changes to key personnel, budget reallocation and request for no-cost extension.

(d) Providing technical assistance as needed.

(e) Approving the final plans for any community business workshops; cooperative, business, and economic development sessions; and training workshops to be conducted by the recipient.

(f) Providing reference assistance, as needed, to the recipient for technical assistance given on a one-on-one basis to entrepreneurs and startup businesses.

(g) Reviewing and commenting on strategic plans developed by recipients for targeted areas.

(h) Reviewing economic assessments made by the recipient for targeted counties, enabling USDA Rural Development to determine the extent to which its programs are beneficial.

(i) Carefully screening projects to prevent First Amendment violations.

(j) Monitoring the program to ensure that a Web site link to USDA Rural Development is established and maintained.

(k) Ensuring that USDA Rural Development State Offices conduct semiannual on-site reviews and submit written reports to the National Office.

(l) Participating in 1890 outreach and development program workshops, seminars, and conferences as needed.

(m) Providing any other work agreed to by USDA Rural Development in the Cooperative Agreement.

IX. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Ave., SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice), or (202) 720-6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

X. Agency Contact**FOR FURTHER INFORMATION CONTACT:**

Edgar L. Lewis, Program Manager, USDA Rural Development, Cooperative Programs, Stop 3252, Room 4204, 1400 Independence Avenue, SW., Washington, DC 20250-3252, Telephone: (202) 690-3407, e-mail: edgar.lewis@wdc.usda.gov.

XI. Paperwork Reduction Act

The paperwork burden associated with this initiative has been cleared by the Office of Management and Budget under OMB Control Number 0570-0041.

Dated: March 19, 2008.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E8-6129 Filed 3-25-08; 8:45 am]

BILLING CODE 3410-XY-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: National Oceanic and Atmospheric Administration (NOAA).
Title: NOAA Community-based Restoration Program Progress Reports.
Form Number(s): None.
OMB Approval Number: 0648-0334.

Type of Request: Regular submission.
Burden Hours: 268.

Number of Respondents: 142.

Average Hours Per Response: Transfer application, 1 hour; transfer appeal, 4 hours.

Needs and Uses: The License Limitation Program (LLP) is a step toward a comprehensive rationalization program to solve the conservation and management problems of Alaska's open access fisheries. The LLP provides stability in the fishing industry and identifies the field of participants in the fisheries. The LLP restricts access to the commercial groundfish fisheries, commercial crab fisheries and commercial scallop fisheries in the Exclusive Economic Zone off Alaska except for certain areas where alternative programs exist. The intended effect of the LLP is to limit the number of participants and reduce fishing capacity in fisheries off Alaska.

Affected Public: Business or other for-profit organizations; individuals or households.

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 David_Rostker@omb.eop.gov.

Dated: March 20, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-6045 Filed 3-25-08; 8:45 am]

BILLING CODE 3510-22-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: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Islands Region Vessel and Gear Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648-0360.

Type of Request: Regular submission.

Burden Hours: 1,134.

Number of Respondents: 301.

Average Hours Per Response: Vessel marking for South Pacific tuna vessels, 1 hour and 15 minutes; for all other vessels, 45 minutes; gear marking, 2 minutes.

Needs and Uses: This collection of information covers regulatory requirements for fishing vessel and gear identification authorized under the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law. The vessels in federally-regulated fisheries in the western Pacific region are required to display the vessel's official number in three locations. Purse seine vessels in the South Pacific are required to display their international radio call sign in three locations and on any helicopter or skiff. The fishing gear in the western Pacific pelagic longline fisheries, Northwestern Hawaiian Islands crustacean fishery, and western Pacific coral reef ecosystem fisheries are required to be marked with the vessel's official number in a specific manner and location. This collection renews OMB Control No. 0648-0360 and adds vessel identification requirements for western Pacific fisheries and the South Pacific purse seine fishery from OMB Control No. 0648-0361. The vessel identification requirements for fisheries off the U.S. west coast will continue to be covered under OMB Control No. 0648-0361.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually.

Respondent's Obligation: Mandatory.

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 David_Rostker@omb.eop.gov.

Dated: March 20, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-6046 Filed 3-25-08; 8:45 am]

BILLING CODE 3510-22-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: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648-0350.

Type of Request: Regular submission.

Burden Hours: 4,500.

Number of Respondents: 6,000.

Average Hours Per Response: 45 minutes.

Needs and Uses: Federally permitted fishing vessels in the Northeast Region of the U.S. must display their vessel identification numbers on three locations (port and starboard sides of the deckhouse or hull, and an appropriate weather deck) on the vessel at a specified size. The requirement is needed to assist the NOAA's National Marine Fisheries Service and the U.S. Coast Guard in enforcing fishery regulations.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

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 David_Rostker@omb.eop.gov.

Dated: March 20, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-6048 Filed 3-25-08; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Census Bureau

**Proposed Information Collection;
Comment Request; 2010 Decennial
Census**

AGENCY: U.S. Census Bureau, Department of Commerce.

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, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before May 27, 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(s) and instructions should be directed to Frank Vitrano, U.S. Census Bureau, Room 3H174, Washington, DC 20233-9200, 301-763-3961 (or via Internet at: frank.a.vitrano@census.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

Article 1, Section 2 of the United States Constitution mandates that the U.S. House of Representatives be reapportioned every ten years by conducting a national census of all residents. In addition to the reapportionment of the U.S. Congress, by law, Census data are required in order to redraw legislative district boundaries. Census data also are used to determine funding allocations for the distribution of hundreds of billions of dollars of federal and state funds each year.

From the 2010 Census, the Census Bureau will produce the basic

population totals by state for Congressional apportionment, as mandated by the Constitution, and more specifically elaborated in Title 13 U.S. Code. Title 13 of the United States Code also provides for the confidentiality of responses to various surveys and censuses.

In compliance with Public Law 94-171, for each state, the Census Bureau will tabulate total population counts by race, Hispanic origin, and, for those 18 years of age and over, by a variety of census geographic areas including legislative district, voting district, and census tabulation blocks. In compliance with Public Law 94-171, the Census Bureau also will tabulate housing unit counts by occupancy status (and vacant).

In the process of developing our data collection instruments for the 2010 Census, the Census Bureau has attempted to reduce respondent burden in two major ways: (1) By providing all households a short form questionnaire containing seven population questions for each household member and four household questions for the person completing the form, and (2) by providing enumerators working in the neighborhoods an up-to-the-minute status of completed questionnaires received by the office, thereby eliminating the need to visit a household that sent in a late return by mail.

II. Method of Collection

A. Mailing Strategy for Questionnaires, Letters, Reminder Postcards

The mailout/mailback method is the primary means of census taking during the 2010 Census. The U.S. Postal Service will deliver Census Bureau-addressed questionnaires to housing units. Residents will be asked to complete and mail the questionnaires back in a postage-paid envelope. For Census 2000, this method was used for more than 80 percent of the housing units in the United States. We will use this method again in 2010.

In the designated mailout/mailback areas of the United States, the 2010 Census will use a multiple mailing strategy—an advance notice letter, an initial questionnaire, a reminder or thank you postcard, and a replacement questionnaire. Our “multiple contact” mailing strategy was developed to get the highest mail response rate possible. Our studies have shown that mailing both a letter telling residents that a questionnaire is on the way, and a postcard reminding them to send it in, increase the mail return rate. We have found that the second mailing, or

replacement mailing, increases the rate of response by at least 7 percentage points and eliminates the need to send a census worker to the home, thereby saving taxpayer dollars. In summary, mailings will include:

- An advance notice letter that alerts households that the census form will be sent to them soon.
- An initial mailing package that includes the questionnaire. In some areas the questionnaire is in English, in others it is a bilingual (English/Spanish) form.
- A reminder post card or letter that serves as a thank you for returning the questionnaire, or a reminder to mail it. For those housing units receiving the bilingual questionnaire, the reminder will be a bilingual (English and Spanish) letter.
- An English-language replacement questionnaire package that is mailed about 10 days after the reminder postcard is mailed. Replacements are sent only to households that do not return their questionnaire by a pre-determined date.

B. Update/Leave Operations

In geographic areas without street names and/or house number addresses (e.g. post office box, rural route, etc.), the census uses an Update/Leave (U/L) enumeration methodology. Enumerators canvass the blocks in their assignment areas, update the address lists and census maps, determine if the housing unit is either a duplicate or nonexistent and should be deleted, and leave addressed census questionnaires at each unit. They also prepare and drop off questionnaires at any added housing units that they find in their assignment areas not showing on existing census address lists. Residents are expected to complete the questionnaire and mail it back to the Census Bureau. An enumerator will visit those who do not return a questionnaire after April 2010 to obtain the information.

C. Update/Enumerate Operations

1. *Update/Enumerate (U/E)*: Update/Enumerate is a method of data collection conducted in communities with special enumeration needs and where mailing addresses of many housing units do not contain house numbers and/or street names. These communities may include selected American Indian reservations and colonias (small, usually rural Spanish-speaking communities). These communities often lack basic physical infrastructure elements such as running water, paved streets and approved sewage systems. U/E also will be implemented in resort areas with high

concentrations of seasonally vacant living quarters. Enumerators will canvass assignment areas to update residential addresses by adding new ones or deleting those not found, update Census Bureau maps, and complete a questionnaire for each housing unit. Each housing unit will be classified as occupied, vacant, or delete.

2. *Remote Update Enumerate (RU/E)*: Remote Update Enumerate is performed similarly to Update/Enumerate (U/E) but in designated remote U/E targeted enumeration areas. Areas include communities that are sparsely populated with an estimated 6,500 or fewer housing units, group quarters, transient locations, and service-based enumerations, as applicable. These areas are not included in the Local Update of Census Addresses (LUCA) program and will not have their address lists updated in the Address Canvass operation.

3. *Remote Alaska (RA)*: The remote areas of Alaska will be enumerated using the Update/Enumerate method. Remote Alaska is identified as Wade Hampton, the Seward Peninsula, the Aleutian Chain, and the Arctic/North Slope. Outlying or remote communities in Alaska range from a few people to several hundred. Roads rarely exist to connect the outlying communities. Most of these small communities are accessible only by small engine aircraft, snowmobiles, four-wheel drive vehicles, dog sled or a combination thereof. Due to the sequential timing of the spring thaw across Alaska, we will begin the remote enumeration earlier in January before the thaw begins when conditions are most favorable. Once the thaw begins, the population leaves to fish and hunt.

D. Enumeration at Transitory Locations (ETL) Operations

The ETL field operation enumerates individuals who do not have a Usual Home Elsewhere, or UHE, that are staying at transitory locations at the time of enumeration. Transitory locations include RV parks, campgrounds, hotels, motels (including those on military sites), marinas, racetracks, circuses, and carnivals. During the operation, enumerators conduct interviews using a paper questionnaire.

E. Be Counted Program and Questionnaire Assistance Centers

1. *Be Counted (BC) Program*: The Be Counted program is designed for persons who believe they were not counted in the 2010 Census. The Census Bureau will place unaddressed census questionnaires at selected public sites

that are easily accessible and frequented by large numbers of people. The BC questionnaires will be printed in Chinese, English, Korean, Russian, Spanish, and Vietnamese languages. They will contain the mailout/mailback style questions, along with additional questions needed to process and match the forms to the census address file.

2. *Questionnaire Assistance Centers (QAC)*: These are "walk-in" community locations where residents are provided assistance in completing their census questionnaire, help with overcoming language barriers, and provided with answers to general questions about the census. Residents can pick up Be Counted questionnaires if they've misplaced the original questionnaire was which mailed to the residence. Residents will be able to locate a QAC by contacting a Census Bureau local census office.

F. Group Quarters (GQ) Operations

1. *Group Quarters Advance Visit (GQAV)*: The GQAV operation informs the GQ contact person of the upcoming GQ enumeration, addresses privacy and confidentiality concerns relating to personal identifiable information, and identifies any security issues, such as restricted access, required credentials, etc. Crew leaders visit all GQs and conduct an interview with the designated contact person to verify the GQ name, address, contact name and phone number, and obtain an agreed upon date and time to conduct the enumeration and an expected Census Day population. The information collected during the interview is used to prepare the correct amount of census materials needed to conduct the enumeration at the facility.

2. *Group Quarters Enumeration (GQE)*: The GQE operation will be conducted at the Group Quarters on the date agreed upon during the Advance Visit. During the GQE, three different enumeration methods can be used to enumerate the population: (1) Interview residents in group quarters like soup kitchens; (2) distribute questionnaire packets for residents in colleges and universities to complete; and (3) use administrative records in places where it is disruptive or unsafe for Census personnel such as prisons. Enumerators will visit group quarters to develop a control list of all residents and distribute census questionnaires (Individual Census Reports or ICRs) for residents to complete, interview the residents and enter the data on the ICR, or use administrative records to complete the ICR. Enumerators collect and review completed ICRs to ensure that they are complete and legible. They

will also complete an ICR for any resident on the control list who did not complete one.

3. *Service-Based Enumeration (SBE)*: The SBE is designed to enumerate people experiencing homelessness and who may otherwise be missed during the enumeration of housing units and group quarters. People are enumerated at places where they receive services and at targeted non-sheltered outdoor locations. SBE locations likely will include shelters for people experiencing homelessness (emergency and transitional shelters, and hotels and motels providing shelter for people experiencing homelessness), domestic violence shelters, soup kitchens, regularly scheduled mobile food van stops, and targeted non-sheltered outdoor locations. This operation is conducted to provide an opportunity for people experiencing homelessness to be included in the census.

4. *Military Group Quarters Enumeration*: Military Group Quarters Enumeration is a special component of the GQE designed to enumerate military personnel assigned to barracks, dormitories, military treatment facilities, and disciplinary barracks and jails. Military Census Reports (MCRs) are distributed to the residents of the military facilities. (Military families living in housing units on bases are enumerated using the mailout/mailback methodology.) For people living or staying in Military GQs, the Census Bureau provides enumeration procedures, training, and questionnaires to military personnel on the base who then conduct the actual enumeration. During the military enumeration, designated base personnel distribute census questionnaires to all military personnel assigned to the GQs, including all people in disciplinary barracks and jails. Within a few days, base personnel collect the completed questionnaires, obtaining census information for any missing cases. Census staffs return to the base to collect the completed questionnaires.

5. *Domestic Military/Maritime Vessels Enumerations (MMVE)*: The MMVE is a special component of Group Quarters Enumeration designed to enumerate people residing on U.S. military ships or on maritime vessels in operation at the time of the census. This is also sometimes called "Shipboard Enumeration." The MMVE uses questionnaires, which are distributed to every Navy and Coast Guard vessel home-ported in the United States and to U.S.-owned and operated flagged vessels used for commercial and non-combatant government purposes. The Census Bureau provides enumeration

procedures, training, and questionnaires to personnel on the vessels who then conduct the actual enumeration.

Designated vessel personnel distribute the census questionnaires to those living on the vessels, collect the completed questionnaires, and mail them to a Census Processing Office using a prepaid envelope.

G. *Non-Response Follow-up Operations*

1. *Non-Response Follow-up (NRFU)*: In mid-April 2010, the Census Bureau will begin identifying the addresses from the mailed-back returns for which we have not received a response, and create enumerator assignments to be used for collecting information from non-respondent households. Beginning early May, enumerators will visit every address for which a household did not respond and complete a census questionnaire for them. Enumerators also will complete a census questionnaire for any household or housing unit they discover that is not shown on the assignment list within their particular assignment area. Housing units will be classified as occupied, vacant, or delete. Enumerator assignments will be updated daily to remove addresses for late mail returns to avoid unnecessary visits to households.

2. *Non-Response Follow-up Reinterview (NRFU RI)*: NRFU RI is a quality assurance operation on the actual NRFU field operation. It is designed to: (1) Ensure that the enumerator correctly followed the NRFU field procedures, and (2) identify enumerators who intentionally or unintentionally produced data errors. A sample of households in an assignment area will be contacted again, in person or by telephone, by an independent separate staff of Census enumerators. Enumerators will re-ask certain questions and compare the answers to the original questionnaire. This will confirm that the enumerator visited the correct address and that the original questionnaire was completed accurately.

3. *Vacant/Delete Check (VDC) Field Operation*: The VDC operation is an independent followup of selected addresses that are classified as vacant or nonexistent during Non-response Follow-up. These addresses are assigned to a different enumerator than the enumerator who made the original classification. Enumerators will verify the Census Day (April 1, 2010) status of the assigned addresses and complete a census questionnaire for all VDC cases. In cases where a housing unit looks visibly demolished, the enumerator must conduct an interview with a proxy respondent (e.g., neighbor or mailman)

to confirm that the address did not exist on Census Day. If the housing unit looks occupied, the interview will be conducted with the household member to confirm the unit's status on Census Day. Although the VDC workload is comprised of only vacant and nonexistent cases from NRFU, the VDC enumerator may determine that a case is vacant, nonexistent, or occupied.

H. *Counting Americans Overseas Operations*

The Federally-Affiliated Americans Overseas Count operation obtains counts from the administrative records of Federal agencies of U.S. military and Federal civilian employees stationed overseas and their dependents living with them as of April 1, 2010. These counts are allocated to a home state for the purposes of reapportioning seats in the U.S. House of Representatives; they are not included in sub-state allocations or redistricting. Federally-affiliated Americans living overseas and their dependents living with them are reported by the employing departments and agencies if they have a designated home state in one of the 50 states or the District of Columbia. If they do not have a designated home state, they will not be included in the final published Summary File of population data or apportioned to any state. Other private U.S. citizens living abroad and crews of merchant ships engaged in foreign transportation are not included in the overseas count.

I. *Telephone Questionnaire Assistance and Fulfillment Operation*

1. *Telephone Questionnaire Assistance (TQA)*: Toll-free telephone numbers (printed on mailback questionnaires) are provided for respondents to obtain information about the 2010 Census in support of data collection activities. Staffers will answer questions about the census questionnaire so that respondents can complete it and mail it back, take an interview over the phone, assist respondents who have difficulty reading or understanding the questionnaire, and accept requests for language guides and questionnaires.

2. *Questionnaire Fulfillment*: When respondents call TQA for forms, staffers will fulfill their requests by mailing census questionnaires in Chinese, English, Korean, Russian, Spanish, or Vietnamese languages. Language assistance guides will be developed in over 50 different languages and be made available to respondents who contact TQA, or can be downloaded from the Internet.

J. Field Verification

For Be Counted questionnaires that do not possess a Master Address File identification number, the Census Bureau will send enumerators out into the field to verify the existence of those housing units that were assigned to a census block, but did not match an address in the Master Address File.

III. Data

OMB Control Number: 0607-0919.

Form Numbers:

Letters:

- D-5(L), Advance Letter (English, Spanish).
 - D-10(L), Cover Letter for Be Counted Questionnaire (Multilanguage).
 - D-16(L), Cover Letter for Mailback Questionnaire (Multilanguage).
 - D-17(L), Cover Letter for Replacement Mailing.
 - D-25(L), Shipboard Reminder Letter.
 - D-36(L), Shipboard 2nd Reminder Letter.
 - D-47(L) PR, Letter to Shipmaster for American Flag Vessels.
 - D-48(L), Letter to Shipboard Operators.
 - D-55(L), Cover Letter for Overseas Personnel and Dependents Counts by State of Residence.
 - D-350(L), GQ Access Letter.
- Questionnaires:
- D-1, Census Questionnaire (Multilanguage).
 - D-10, Be Counted (Multilanguage).
 - D-15, Enumeration of Transitory Locations (English, Spanish).
 - D-20, Individual Census Report (English, Spanish).
 - D-21, Military Census Report.
 - D-23, Shipboard Census Report.
 - D-351, Group Quarters Validation.

Postcard:

- D-9, Reminder Postcard (English, Spanish).

Notices:

- D-26, Notice of Visit—Puerto Rico (English, Spanish).
- D-31, Privacy Act Notice—Puerto Rico (English, Spanish).

Electronic Data Collection Instrument:

- D-1302I, Coverage Follow-Up Telephone Interview Instrument (English, Spanish).
- D-1400I, TQA Telephone Interview Instrument (English, Spanish).
- D-1500I, Nonresponse Followup Instrument (English, Spanish).
- D-1501I, NRFU Reinterview Instrument (English, Spanish).
- D-1502I, NRFU Vacant Delete Check Instrument (English, Spanish).

Type of Review: Regular Submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents (Stateside and Puerto Rico (PR)): Short

form 133,700,000 households;
Reinterview—2,100,000 households.
Estimated Time Per Response: Short Form—10 minutes; Reinterview—10 minutes.

Estimated Total Annual Burden Hours: Short Form—22,283,333 hours; Reinterview—350,000 hours.

Estimated Total Annual Cost: \$0.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 141 and 193.

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 20, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-6047 Filed 3-25-08; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations. The Committee will address policy, research, and technical issues related to 2010 Decennial Census Programs. The Committee will also discuss several economic initiatives and demographic program topics, as well as issues pertaining to 2010 communications. Last-minute changes to the agenda are possible, which could prevent giving

advance public notice of schedule adjustments.

DATES: April 10-11, 2008. On April 10, the meeting will begin at approximately 8:15 a.m. and adjourn at approximately 5 p.m. On April 11, the meeting will begin at approximately 8:30 a.m. and adjourn at approximately 11:30 a.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room-8H153, Washington, DC 20233. Her telephone number is (301) 763-6590, TDD (301) 457-2540.

SUPPLEMENTARY INFORMATION: The Census Advisory Committee of Professional Associations is composed of 36 members, appointed by the presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee addresses Census Bureau programs and activities related to each respective association's area of expertise. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

The meeting is open to the public, and a brief period is set aside for public comment and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Committee Liaison Officer named above. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer.

Dated: March 21, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8-6202 Filed 3-25-08; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 080229350-8450-03]

Request for Public Comments on Crime Control License Requirements in the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of Inquiry, Correction.

SUMMARY: This notice corrects a transposition error in the address for submitting comments to a notice of inquiry published on March 19, 2007 (73 FR 14769). The reference to room H-7205 should have read H-2705. As corrected, the final sentence of the addresses paragraph reads:

ADDRESSES: * * * Comments may also be submitted by e-mail directly to BIS at publiccomments@bis.doc.gov or on paper to U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, Room H-2705, Washington DC 20230.

Dated: March 20, 2008

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. E8-6175 Filed 3-25-08; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-602-806)

Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Electrolytic Manganese Dioxide from Australia

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

SUMMARY: We preliminarily determine that imports of electrolytic manganese dioxide from Australia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). Interested parties are invited to comment on this preliminary determination. We will make our final determination within 75 days after the date of this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3477 or (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 2007, the Department of Commerce (the Department) published in the **Federal Register** the initiation of antidumping duty investigations of electrolytic manganese dioxide from Australia and

the People's Republic of China. See *Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China*, 72 FR 52850 (September 17, 2007) (*Initiation Notice*). The Department set aside a period for all interested parties to raise issues regarding product coverage. The Department encouraged all interested parties to submit such comments within 20 days from publication of the initiation notice, that is, by October 9, 2007. See *Initiation Notice*, 72 FR at 52851; see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Final Rule*).

On October 24, 2007, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of electrolytic manganese dioxide from Australia are materially injuring the U.S. industry and the ITC notified the Department of its findings. See *Electrolytic Manganese Dioxide from Australia and the People's Republic of China, Investigation Nos. 731-TA-1124 1125 (Preliminary)*, 72 FR 60388-60389 (October 24, 2007) (*ITC Preliminary Notice*).

On January 15, 2008, we postponed the deadline for the preliminary determinations under section 733(c)(1)(A) of the Act by 50 days to March 19, 2008. See *Postponement of Preliminary Determinations of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China*, 73 FR 2445 (January 15, 2008).

Period of Investigation

The period of investigation (POI) is July 1, 2006, through June 30, 2007.

Scope of Investigation

The merchandise covered by this investigation includes all manganese dioxide (MnO₂) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form (EMD). Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of

time for parties to raise issues regarding product coverage in the *Initiation Notice* and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. See *Final Rule*, 62 FR at 27323. We did not receive comments from any interested parties in this investigation.

Respondent Identification

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act also gives the Department discretion to examine a reasonable number of such exporters and producers when it is not practicable to examine all exporters and producers. In order to identify the universe of producers/exporters in Australia to investigate for purposes of this less-than-fair-value investigation on EMD, we analyzed information from various sources, including data from U.S. Customs and Border Protection (CBP).

Using information obtained from the petition, an internet search, and CBP statistical information on U.S. imports of EMD during the POI, we identified one respondent, Delta Australia Pty Ltd (Delta). For a detailed analysis of our respondent-identification procedure, see Memorandum to Laurie Parkhill, "Antidumping Duty Investigation on Electrolytic Manganese Dioxide from Australia Respondent Identification," dated October 25, 2007, on file in the Central Records Unit (CRU) in room 1117.

Delta

On October 31, 2007, we issued a questionnaire to Delta and requested that it respond by December 7, 2007. On November 27, 2007, we granted Delta an extension until December 28, 2007, to respond to all sections of the questionnaire. On December 28, 2007, we received Delta's sections A and C responses. We granted Delta an extension until February 8, 2008, to respond to sections B and D of the questionnaire. On January 31, 2008, we received a letter from Delta explaining that, due to the closing of its plant facility in Australia, it did not have resources to provide adequate responses to the questionnaire or to continue active participation in this investigation. Thus, Delta did not submit any further questionnaire responses, including sections B and D due on February 8, 2008, or a response to the Department's supplemental questionnaire (sections A and C) due on February 14, 2008.

Use of Adverse Facts Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to Delta.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On January 31, 2008, forty-eight days before the Department's preliminary determination, Delta informed the Department that it did not have resources to continue active participation in the instant investigation. See Letter from Delta, "Notification of Intent Not to Participate Due to Closure of Australian EMD Facility" (January 31, 2008). Because Delta ceased participation in the instant investigation, Delta did not provide pertinent information necessary to calculate an antidumping margin for the preliminary determination. Specifically, Delta did not respond to sections B and D of the Department's questionnaire and did not respond to the January 30, 2008, supplemental questionnaire concerning its already-filed responses to sections A and C. Thus, by not providing the pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination, Delta has failed to cooperate to the best of its ability. Therefore, we find that the application of total facts available for Delta is

warranted in this preliminary determination.

B. Application of Adverse Inferences for Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. See, e.g., *Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (*CSSSHP Final Determination*) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See, e.g., *Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994) (*SAA*). Furthermore, "affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997). Although the Department provided Delta with 58 days to respond to sections A and C of the questionnaire and 93 days to respond to sections B and D of the questionnaire, Delta did not respond adequately to the Department's questionnaire. While Delta has provided a reason for not participating in this investigation, this constitutes a failure on the part of Delta to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of sections 776(b) and 782(d) of the Act. Because Delta did not provide the information requested, section 782(e) of the Act is not applicable. Therefore, the Department preliminarily finds that, in selecting from among the facts otherwise available, an adverse inference is warranted. See, e.g., *CSSSHP Final Determination*, 65 FR at 42986.

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate

by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c). It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216, 77218 (December 27, 2004) (unchanged in final determination, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned Delta a rate of 120.59 percent based on the rate alleged in the petition, as recalculated in this preliminary determination and discussed below. See *Antidumping Duty Petitions on Electrolytic Manganese Dioxide from Australia and the People's Republic of China* (August 22, 2007) (*Petition*), September 4, 2007, Supplements to the *Petition* (addressing the Department's requests for additional information and clarification on certain areas in the *Petition*), *Initiation Notice*, 72 FR at 52854, and the Preliminary Determination Analysis Memorandum (March 19, 2008).

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

The *SAA* clarifies that "corroborate" means the Department will satisfy itself that the secondary information to be used has probative value. See *SAA* at 870. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in final results, 62

FR 11825, 11843 (March 13, 1997)). The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d).

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the *Petition* during our pre-initiation analysis and again for purposes of this preliminary determination. See *Antidumping Duty Investigation Initiation Checklist: Electrolytic Manganese Dioxide from Australia* (September 11, 2007) (Australia Initiation Checklist). We examined evidence supporting the calculations in the *Petition* to determine the probative value of the margins alleged in the *Petition* for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export-price and normal-value calculations used in the *Petition* to derive margins. During our pre-initiation analysis, we also examined information from various independent sources provided either in the *Petition* or in the supplements to the *Petition* that corroborates key elements of the export-price and normal-value calculation used in the *Petition* to derive an estimated margin.

U.S. Price

The petitioner calculated a single U.S. price using the POI-average unit customs values (AUVs) for U.S. import data, as reported on the ITC's Dataweb for the POI. The petitioner deducted an amount for foreign inland-freight costs. See *Petition*, at Exhibit 11, Supplemental Responses at Exhibit R, and *Australia Initiation Checklist*, at 5-6. The petitioner provided an affidavit from an individual attesting to the validity of the inland-freight costs it used in the calculation of net U.S. price. See *Petition*, at Exhibit 13. In calculating the export price, the petitioner relied exclusively on AUV data with respect to U.S. imports from Australia under the HTSUS number 2820.10.00.00. This HTSUS number is a "basket category" as it includes both subject EMD and non-subject CMD and NMD. The petitioner used PIERS data to demonstrate that the imports under HTSUS number 2820.10.00.00 are, in fact, overwhelmingly subject merchandise because PIERS provides more specific product-identification information than official U.S. Census

data as reported on the ITC's Dataweb import statistics. See *Petition*, at Exhibit 10. U.S. official import statistics are sources that we consider reliable and thus require no further corroboration. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005), and Memorandum to the File from Dmitry Vladimirov entitled "Preliminary Determination in the Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan: Corroboration of Total Adverse Facts Available Rate," at 3, August 11, 2005 (*Chromium from Japan*) (unchanged in final determination, 70 FR 65886 (November 1, 2005)). In addition, the petitioner provided information that indicates that there are no producers of CMD or NMD in Australia and that the majority of imports under this HTSUS number are from a company that only produces EMD. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the *Petition*.

Based on our examination of the aforementioned information, we consider the petitioner's calculation of net U.S. prices to be reliable and relevant. Because the rate is both reliable and relevant it is corroborated.

On February 19, 2008, the petitioner provided comments with respect to U.S. price. Specifically, the petitioner requests that the Department adjust the petition rate by using information in Delta's U.S. database to calculate net U.S. price. The petitioner argues that the Department should use Delta's U.S. database to derive U.S. price because it is more accurate than the information contained in the petition. According to the petitioner, using this information will ensure that Delta is not unfairly rewarded for its failure to cooperate in this investigation.

Because we have not had an opportunity to confirm that we would be relying upon accurate information for purposes of calculating a dumping margin as accurately as possible in the instant case, we find information contained in Delta's U.S. database to be unreliable in this investigation. See sections 776(a)(2) and 782(i) of the Act. As such, we have preliminarily determined not to use any data submitted by Delta in this proceeding.

Normal Value

With respect to normal value, the petitioner provided information that there were no sales in commercial quantities of EMD in the home market during the POI and that home-market

prices were not reasonably available. The petitioner proposed Japan as the largest third-country comparison market and demonstrated that Japan is a viable third-country market. See *Petition*, at Exhibit 15. The petitioner provided Global Trade Atlas EMD import data for exports from Australia into Japan and compared them with U.S. EMD import data for imports from Australia. According to these figures, the sales volume to Japan was greater than five percent of the sales volume to the United States. The petitioner compared third-country prices with an estimate of the cost of producing EMD in powder form by Delta. Because these data indicated that sales of EMD were made at prices below the product's cost of production (COP), pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioner based normal value for sales of EMD in Japan on constructed value.

Pursuant to section 773(b)(3) of the Act, the COP consists of the cost of manufacturing (COM), selling, general, and administrative expenses (SG&A), and packing expenses. To calculate the COM, the petitioner relied on its own costs during the 2006 fiscal year, adjusted for known differences between the costs in the United States and the costs in Australia. The petitioner obtained all of the cost differences between the United States and Australia that were used to calculate the COM from public sources. The petitioner used its own factory-overhead costs (FOH) as a conservative estimate of the Australian FOH. This is because the petitioner's facilities are older than Delta's and would thus likely have lower depreciation because more of the assets making up the petitioner's facilities would likely have reached the end of their service lives and, thus, have no book value. Because Delta's unconsolidated financial statements were not reasonably available, the petitioner used the financial statements of an Australian zinc producer because, it asserted, zinc undergoes a production process similar to EMD. For purposes of the *Initiation Notice*, we adjusted the petitioner's calculation of SG&A and profit ratios by using information from Delta PLC's consolidated financial statement pertinent to the Australian EMD segment of its business. We used Delta PLC's financial records because these records included Delta's actual costs of producing the merchandise under consideration. See *Australia Initiation Checklist* for a full description of the petitioner's methodology and the adjustments we made to those calculations for the initiation decision.

In the *Australia Initiation Checklist*, we stated that the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of EMD were made at prices below the fully absorbed COP within the meaning of section 773(b) of the Act. See *Australia Initiation Checklist*, at 7. Consequently, we found reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, we initiated a country-wide, sales-below-cost investigation.

With regard to profit, we stated in our *Australia Initiation Checklist* that we did not include an amount for profit in our calculation of constructed value because the manganese segment of Delta PLC had a net loss for the year ending 2006. See *Australia Initiation Checklist*, at 9. We also stated that we would examine different options for calculating a profit later in this proceeding if it becomes necessary to calculate a constructed value from the *Petition* information. *Id.* at 9.

Section 773(e)(2)(B)(iii) of the Act requires the Department to use the amounts incurred and realized for SG&A and for profits based on any other reasonable method if actual data are not available with respect to SG&A and profit. In accordance with our practice, to determine an appropriate profit rate we have considered several factors in the instant case: 1) the similarity of the potential surrogate company's business operations and products to Delta's; 2) the contemporaneity of the surrogate data to the POI. See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001), and the accompanying *Decision Memorandum* at Comment 8. The greater the similarity in business operations and products, the more likely that there is a greater correlation in the profit experience of the two companies. Contemporaneity is important because markets change over time and the more current the data the more reflective it would be of the market in which the respondent is operating. *Id.*

In its February 19, 2008, comments the petitioner requested that the Department adjust the petition rate by adding an amount for profit to the calculation of constructed value. The petitioner asserts that, in situations such as those found in this case, the Department's general practice is to assign to the non-cooperating respondent the highest margin alleged in the petition, as an adverse inference, in accordance with section 776(b) of the Act. The petitioner argues that, although

the petition rate was based on constructed value, in its notice of initiation of the investigation the Department did not apply an amount for profit in its constructed-value recalculation and indicated explicitly that it would correct this deficiency if it became necessary to apply adverse inferences using the petition rate. The petitioner asserts that, because Delta is the only EMD producer in Australia and because Delta PLC's 2007 interim report indicates that its EMD division is still generating an operating loss, the Department has essentially two options for identifying a usable profit rate for recalculating constructed value. Specifically, the petitioner argues, the Department can either use the profit rate of Zinifex Limited, an Australian producer of merchandise comparable to EMD, or use the profit rate of a non-Australian EMD producer. The petitioner contends that, if the Department decides to use the profit rate of an Australian producer of comparable merchandise, it recommends that the Department use the profit rate contained in the 2007 Annual Report of Zinifex Limited. See Petitioner's Submission, "Electrolytic Manganese Dioxide from Australia; Application of Facts Available for Preliminary Determination" at 5 (February 19, 2008). Citing *Certain Steel Nails from the United Arab Emirates: Initiation of Antidumping Duty Investigation*, 72 FR 38816, 38820 (July 16, 2007), the petitioner argues that the Department has an established practice of accepting surrogate financial ratios of comparable companies in the same country for purposes of initiation.

The petitioner asserts that, if the Department decides to apply the surrogate profit rate of an EMD producer, then the Department must look to contemporaneous information for a company located outside Australia. The petitioner claims that it is aware of only one EMD producer in India that had a positive profit during the relevant period.

Based on the information on the record, we have preliminarily determined to use Zinifex Limited as a surrogate company from which to select a reasonable profit rate for use in the calculation of constructed value. For purposes of contemporaneity, we derived the surrogate profit rate from Zinifex Limited's 2006 financial statement. Using this statement as a source for a profit rate ensures that the data is contemporaneous with the data used in the *Petition*, which was based solely on 2006 cost experience. Our decision to use Zinifex Limited was based on the fact that it is an Australian

zinc producer with similar production processes to that of EMD production, which involves electrolysis. Specifically, both production processes use the electrolytic process to produce zinc. See *Petition* at page 21 and Exhibit 8. Using Zinifex Limited's financial statements yields a profit rate of 44.27 percent. See Preliminary Determination Analysis Memorandum (March 19, 2008).

Because the petitioner had demonstrated, and we confirmed, the validity of the input-usage quantities it used in its COP/constructed value build-up, used public sources of information, such as official import statistics that we confirmed were accurate to value inputs of production, and used Delta PLC's (Delta's consolidated parent company) audited financial statements, which are publicly available, to compute Delta's finance expense that we confirmed were accurate, we consider the petitioner's calculation of normal value, based on constructed value, to be reliable. With regard to SG&A, as stated above, we recalculated the petitioner's calculation using Delta PLC's audited financial statements. In addition, with regard to profit, we calculated a profit rate using Zinifex Limited's audited financial statements, which are publicly available. Zinifex Limited is an Australian producer of comparable merchandise and thus its business operations and products are similar to that of the respondent's in the instant case. Further, we consider the petitioner's calculation of normal value corroborated because the bulk of the calculations relied on publicly available information or import statistics that do not require further corroboration. Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of the margin we have calculated in this preliminary determination by examining source documents as well as publicly available information, we preliminarily determine that the margin based on the rate alleged in the *Petition*, as recalculated in this preliminary determination, is reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR

6812, 6814 (February 22, 1996), the Department disregarded the highest margin as “best information available” (the predecessor to “facts available”) because the margin was based on another company’s uncharacteristic business expense that resulted in an unusually high dumping margin.

In *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the AFA rate bore a “rational relationship” to the respondent’s “commercial practices,” and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed that the calculation of the margin in the *Petition* reflects commercial practices of the particular industry during the POI. Further, no information has been presented in the investigation that calls into question the relevance of this information.

As such, we preliminarily determine that the margin based on the rate alleged in the *Petition*, as recalculated in this preliminary determination, is relevant as the AFA rate for Delta in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53407 (September 11, 2006) (unchanged in final results, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving Delta, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determined to be relevant to Delta in this investigation, we have corroborated the AFA rate “to the extent practicable.” See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating that “pursuant to the to the extent practicable’ language...the corroboration requirement itself is not mandatory when not feasible”). Therefore, we find that the estimated margin of 120.59 percent we have calculated in this preliminary determination has probative value. Consequently, in selecting AFA with respect to Delta, we have applied the margin rate of 120.59 percent, the highest estimated dumping margin set forth in this investigation. See Preliminary Determination Analysis Memorandum (March 19, 2008).

Delta filed comments on the application of AFA and selection of a profit rate on March 11, 2008. We considered those comments for purposes of this preliminary determination. We will address comments parties raise in their case briefs in our final determination.

Targeted Dumping

On January 17, 2008, Tronox LCC (the petitioner) filed a targeted-dumping allegation concerning Delta under section 777A(d)(I)(B) of the Act. Because Delta decided not to participate in this investigation for the reasons stated above and, therefore, we have applied AFA to its exports, we find the issue of targeted dumping to be moot and have not addressed it in this preliminary determination.

All-Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. This provision contemplates that, if the data do not permit weight-averaging margins other than the zero, *de minimis*, or total facts-available margins, the Department may use any other reasonable methods. See also *SAA*, at 873. Because the petition contained only one estimated dumping margin and because there are no other respondents in this investigation, there are no additional estimated margins available with which to create the all-others rate. Therefore, we are using the preliminary determination margin of 120.59 percent as the all-others rate. In addition, because Delta provided incomplete information on the record that we were unable to verify, we were unable to calculate a margin for the all-others rate.

Critical Circumstances

A. Delta

On February 19, 2008, the petitioner requested that the Department make a finding that critical circumstances exist with respect to imports of EMD from Australia. The petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise. The petitioner based its allegation on evidence of massive imports of subject merchandise for the post-petition period of September through December 2007.

Because this allegation was filed earlier than the deadline for the preliminary determination, we must issue our preliminary critical-circumstances determination not later than the preliminary determination. See 19 CFR 351.206(c)(2).

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that:

- (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether the relevant statutory criteria have been satisfied, the Department considered the evidence presented in the petitioner’s February 19, 2008, submission and the *ITC Preliminary Notice*.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006) (unchanged in final determination, 71 FR 45012 (August 8, 2006)). The petitioner has made no statement concerning a history of dumping of EMD from Australia. Moreover, we are not aware of any antidumping duty order on EMD from Australia in any other country. Therefore, the Department finds no history of injurious dumping of EMD from Australia pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value, in accordance with section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export-price sales or 15 percent or more for constructed export-price (CEP) transactions sufficient to impute knowledge of dumping. See, e.g., *Final Determination of Sales at Less Than*

Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964, 61966 (November 20, 1997)). For the reasons explained above, we have assigned a margin of 120.59 percent to Delta. Based on this margin, we have imputed importer knowledge of dumping for imports from Delta.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, consistent with section 733(e)(1)(A)(ii) of the Act, normally the Department will look to the preliminary injury determination of the ITC. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan*, 64 FR 30574, 30578 (June 8, 1999) (*Stainless Steel from Japan*). The ITC preliminarily found a reasonable indication of material injury to the domestic industry due to imports of EMD from Australia which are alleged to be sold in the United States at less than fair value and, on this basis, the Department may impute knowledge of likelihood of injury to this respondent. See *ITC Preliminary Notice*, 72 FR at 60388. Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

Because Delta has met the first prong of the critical-circumstances test, according to section 733(e)(1)(A) of the Act we must examine whether imports from Delta were massive over a relatively short period of time. Section 733(e)(1)(B) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption for which the imports accounted. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (i.e., the date on which the petition is filed) and ending at least

three months later. The Department's regulations also provide that, if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

Because we do not have verifiable data from Delta, we must base our "massive imports" determination on the facts available, pursuant to section 776(a) of the Act.¹ Because Delta failed to cooperate by not acting to the best of its ability to respond fully to our questionnaires, we may make an adverse inference in selecting the facts available, pursuant to section 776(b) of the Act.

The Department's long-standing practice is to rely on respondent-specific shipment data to determine whether imports were massive in the context of critical-circumstance determinations. Where such information does not exist because of the respondent's failure to cooperate to the best of its ability in the course of the investigation, the Department normally makes an adverse inference that imports were massive during the relevant time period. We do not normally rely on publicly available import data as facts available in such circumstances because such data are imprecise and often reflect the activity of multiple exporters and products, i.e., subject merchandise may have entered the United States during the relevant period under a broad HTSUS category. In this case, however, we are presented with unique circumstances such that Delta is the only known exporter of EMD from Australia and public information indicates that imports under the respective HTSUS category are of subject merchandise. Moreover, the data demonstrate that imports of merchandise produced and exported by Delta were massive over a relatively short period. Thus, under these unique circumstances, the Department believes it appropriate to rely on import data, as facts available with an adverse inference, in determining whether the massive-imports requirement for the

critical-circumstances determination has been met with respect to Delta.

Based on our determination that there is a reasonable basis to believe or suspect that the importer knew or should have known that Delta was selling EMD from Australia at less than fair value, that there was likely to be material injury by reason of such dumped imports, and that there have been massive imports of EMD from Delta over a relatively short period, we preliminarily determine that critical circumstances exist for imports from Australia of EMD produced by Delta.

Delta filed comments on critical circumstances on March 10, 2008. We considered those comments for purposes of this preliminary determination. We will address any comments parties raise in their case briefs in our final determination.

B. All Others

It is the Department's normal practice to conduct its critical-circumstances analysis of companies in the all-others group based on the experience of investigated companies. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9741 (March 4, 1997), where the Department found that critical circumstances existed for the majority of the companies investigated and concluded that critical circumstances also existed for companies covered by the all-others rate. As we determined in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24338 (May 6, 1999), applying that approach literally could produce anomalous results in certain cases. Thus, in deciding whether critical circumstances apply to companies covered by the all-others rate, the Department also considers the traditional critical-circumstances criteria.

First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling EMD at less than fair value, we look to the all-others rate. See *TTR from Japan*, 68 FR at 71077. The dumping margin for the all-others category, 120.59 percent, is greater than the 25-percent threshold necessary to impute knowledge of dumping consistent with section 733(e)(1)(A)(ii) of the Act. Second, based on the ITC's preliminary determination that there is a reasonable indication of material injury, we also find that importers knew or should have known that there would be material

¹ Because Delta did not respond fully to our questionnaires, we consider Delta a non-cooperating respondent and, accordingly, we did not request monthly shipment data from Delta, consistent with our practice. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 68 FR at 71078 (December 22, 2003) (*TTR from Japan*) (unchanged in final determination, 69 FR 11834 (March 12, 2004)).

injury from the dumped merchandise, consistent with 19 CFR 351.206. See *ITC Preliminary Notice*, 72 FR at 60388.

Finally, with respect to massive imports, we are unable to base our determination on our findings for Delta because our determination for Delta was based on AFA. We have not inferred, as AFA, that massive imports exist for companies under the all-others category, because, unlike the uncooperative company in question, the all-others companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to finding a massive surge in imports by the all-others companies is not appropriate. In addition, the record indicates that the only producer of EMD from Australia is Delta. See "Antidumping Duty Investigation on Electrolytic Manganese Dioxide from Australia Respondent Identification," October 25, 2007. Thus, we determine that there were no massive imports from companies in the all-others category.

Consequently, the criteria necessary for determining affirmative critical circumstances with respect to the all-others category have not been met. Therefore, we have preliminarily determined that critical circumstances do not exist for imports of EMD from Australia for companies in the all-others category, as there were no shipments of the foreign like product from any other companies during the relevant period.

Preliminary Determination

We preliminarily determine that the following dumping margins exist for the period July 1, 2006, through June 30, 2007:

Manufacturer or Exporter	Margin (percent)
Delta	120.59
All Others	120.59

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of EMD from Australia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Additionally, for Delta we will instruct CBP to suspend liquidation of entries made on or after 90 days prior to the publication of this notice in accordance with section 733(e)(2) of the Act. We will instruct CBP to require a cash deposit or the posting of a bond equal to the margins, as indicated in the chart above, as follows: (1) the rate for Delta will be 120.59 percent; (2) if the

exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 120.59 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the Commission's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination, pursuant to section 735(b)(2) of the Act.

Public Comment

Case briefs for this investigation must be submitted no later than 50 days after the publication of this notice, pursuant to 19 CFR 351.309(c)(1)(i). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, consistent with 19 CFR 351.309(d)(1). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. See 19 CFR 351.310(d)(1). Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. See 19 CFR 351.310(c). Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will not be conducting a verification of Delta's responses because it has failed to file responses to all of our questionnaires, as discussed above in the Use of Adverse Facts Available section of this notice. Therefore, the deadline for submission of factual information in 19 CFR 351.301(b)(1) is not applicable. Thus, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice.

We will make our final determination within 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: March 19, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-6167 Filed 3-25-08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-919

Electrolytic Manganese Dioxide from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

EFFECTIVE DATE: March 26, 2008.

SUMMARY: We preliminarily determine that electrolytic manganese dioxide ("EMD") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Pursuant to a request from an interested party, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC, 20230; telephone: (202) 482-0414 or 482-3434, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On August 22, 2007, Tronox LLC (“Tronox” or “Petitioner”), filed a petition in proper form on behalf of the domestic industry, concerning imports of EMD from the PRC (“Petition”). The Department of Commerce (“the Department”) initiated this investigation on September 11, 2007.¹ In the *Notice of Initiation*, the Department applied a process by which exporters and producers may obtain separate-rate status in non-market economy (“NME”) investigations. The process requires exporters and producers to submit a separate-rate status application (“SRA”).² However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed. The SRA for this investigation was posted on the Department’s website <http://ia.ita.doc.gov/ia-highlights-and-news.html> on September 19, 2007. The due date for filing an SRA was November 9, 2007. No party filed an SRA in this investigation.

On September 25, 2007, we sent a letter to interested parties requesting comments regarding the physical characteristics to be used in our questionnaire. On October 9, 2007, Petitioner submitted comments. No other party submitted comments.

On October 18, 2007, the United States International Trade Commission (“ITC”) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of EMD from the PRC.³

On October 16, 2007, the Department issued its respondent selection memorandum, selecting Guizhou Redstar Developing Import and Export Company, Ltd. (“Redstar”) and Xiangtan Electrochemical Scientific Ltd. (“Xiangtan”) as mandatory respondents

in this investigation.⁴ On November 6, 2007, the Department issued an antidumping duty questionnaire to the two above-named mandatory respondents. On November 27, 2007, Xiangtan submitted a letter to the Department stating that it would not participate in the investigation.

On November 28, 2007, the Department requested that the Office of Policy provide a list of surrogate countries for this investigation.⁵ On December 5, 2007, Redstar submitted its Section A response. On December 20, 2007, the Office of Policy issued its list of surrogate countries.⁶ On December 28, 2007, Redstar submitted its Sections C and D responses. On January 15, 2008, subsequent to a request from Petitioner submitted on December 31, 2007, the Department extended the time period for issuing the preliminary determination by 50 days.⁷ On January 23, 2008, the Department released a letter to interested parties requesting comments on the appropriate surrogate country to use in this investigation and for publicly available information to value factors of production (“FOP”). On February 6, 2008, Petitioner submitted comments on surrogate country selection. On February 20, 2008, both Petitioner and Redstar submitted publicly available information to value FOPs.

Period of Investigation

The period of investigation (“POI”) is January 1, 2007, through June 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was September 2007.⁸

Scope of Investigation

The merchandise covered by this investigation includes all manganese dioxide (MnO₂) that has been

manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations,⁹ in our initiation notice, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the initiation notice. No party submitted comments on the scope of this investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to it, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. We determined we had the resources to examine two exporters. We further determined to limit our examination to the two exporters accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. Our analysis indicates that Redstar and Xiangtan are the two largest PRC exporters of subject

¹ See *Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People’s Republic of China*, 72 FR 52850 (September 17, 2007) (“*Notice of Initiation*”).

² See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) (“*Policy Bulletin 05.1*”), available at <http://ia.ita.doc.gov/policy/bullo5-1.pdf>.

³ See *Investigation Nos. 731-TA-1124 and 1125 (Preliminary): Electrolytic Manganese Dioxide from Australia and China*, 72 FR 60388 (October 24, 2007).

⁴ See Memorandum to Wendy Frankel, “Respondent Selection Memorandum: Antidumping Duty Investigation of Electrolytic Manganese Dioxide from the People’s Republic of China” (October 16, 2007) (“Respondent Selection Memorandum”). See also “Selection of Respondents” section below.

⁵ See Memorandum to Ron Lorentzen, Director, Office of Policy, “Less-Than-Fair-Value Investigation of Electrolytic Manganese Dioxide from the People’s Republic of China (‘PRC’), Surrogate Country Selection List” (November 28, 2007).

⁶ See Memorandum from Ron Lorentzen, Director, Office of Policy, “Antidumping Duty Investigation of Electrolytic Manganese Dioxide from the People’s Republic of China (‘PRC’): Request for a List of Surrogate Countries” (December 20, 2007) (“Surrogate Countries Memorandum”).

⁷ See *Postponement of Preliminary Determinations of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People’s Republic of China*, 73 FR 2445 (January 15, 2008).

⁸ See 19 CFR 351.204(b)(1).

⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

merchandise by weight, and account for a significant percentage of all exports of the subject merchandise from the PRC during the POI. As a result, we selected these entities as the mandatory respondents in this investigation.¹⁰

Non-Market Economy Country

For purposes of initiation, Petitioner submitted an LTFV analysis for the PRC as an NME.¹¹ The Department considers the PRC an NME.¹² In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority.¹³ No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (“NV”) on the NME producer’s FOPs. The Act further instructs the Department to value FOPs based on the best available information in a surrogate market economy country or countries considered to be appropriate by the Department.¹⁴ When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.¹⁵ Further, the Department normally values all FOPs in a single surrogate country.¹⁶ The sources of the surrogate values (“SV”) are discussed under the “Normal Value” section below and in the Memorandum to the File, Surrogate Value Memorandum, dated March 19, 2008, which is on file in the Central Records Unit, Room 1117 of the main Department building.

The Department determined that India, Indonesia, the Philippines, Colombia and Thailand are countries

comparable to the PRC in terms of economic development.¹⁷ Once the economically comparable countries have been identified, we select an appropriate surrogate country by determining whether one of these countries is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.

We have determined it appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (A) India is at a level of economic development comparable to that of the PRC, and (B) India is a significant producer of comparable merchandise. Furthermore, we have reliable data from India that we can use to value the FOPs.¹⁸ Thus, we have calculated NV using Indian prices when available and appropriate to value Redstar’s FOPs. We have obtained and relied upon publicly available information wherever possible.¹⁹

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit within 40 days after the date of publication of the preliminary determination publicly available information to value the FOPs.²⁰

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department’s policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be

entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”).²¹ However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control. No companies in this investigation reported that they are wholly owned by individuals or companies located in a market-economy country and no companies reported that they are located outside the PRC.

The sole participating company in this investigation, Redstar, stated that it is a wholly PRC-owned company. Therefore, the Department must analyze whether Redstar can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.²²

²¹ See also *Policy Bulletin 05.1* at 6, which states: “[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ‘combination rates’ because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.”

²² See *Sparklers*, 56 FR at 20589.

¹⁰ See Respondent Selection Memorandum.

¹¹ See *Notice of Initiation*, 72 FR at 52853.

¹² See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in the *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 60632 (October 25, 2007).

¹³ See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People’s Republic of China*, 71 FR 16116 (March 30, 2006) (“*Artist Canvas*”).

¹⁴ See Section 773(c)(1) of the Act.

¹⁵ See Section 773(c)(4) of the Act.

¹⁶ See 19 CFR 351.408(c)(2).

¹⁷ See Surrogate Countries Memorandum.

¹⁸ *Id.* at 2.

¹⁹ See Memorandum to Wendy J. Frankel, “Electrolytic Manganese Dioxide from the People’s Republic of China: Surrogate Value Memorandum” (March 19, 2008) (“*Surrogate Value Memorandum*”).

²⁰ In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

The evidence provided by Redstar supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.²³

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.²⁴ The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. We determine for Redstar that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) Redstar sets its own export prices independent of the government and without the approval of a government authority; (2) Redstar retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) Redstar has the authority to negotiate and sign contracts and other agreements; and (4) Redstar has autonomy from the government regarding the selection of management.²⁵

The evidence placed on the record of this investigation by Redstar demonstrates an absence of *de jure* and *de facto* government control with

respect to each its exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

Application of Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.²⁶

Application of Total Adverse Facts Available

The PRC-Wide Entity

On October 16, 2007, we selected Xiangtan as one of the mandatory respondents. On November 6, 2007, we issued our questionnaire to Xiangtan. On November 27, 2007, Xiangtan 1) stated it will not participate in this investigation through the submission of questionnaire responses, 2) stated that it had shredded and/or erased all submissions containing business proprietary information, and 3) requested to be removed from the APO service list. Thus, there is no information on the record of this investigation with respect to Xiangtan. Because Xiangtan was selected as a mandatory respondent and failed to demonstrate its eligibility for separate-rate status, it remains subject to this investigation as part of the PRC-wide entity.

Pursuant to section 776(a) of the Act, we further find that because the PRC-wide entity (including Xiangtan) failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, and otherwise impeded the proceeding, it is appropriate to apply a dumping margin for the PRC-wide entity using the facts otherwise available on the record. Additionally, because this party failed to cooperate by refusing to respond to our requests for information, we find an adverse inference is appropriate pursuant to section 776(b) of the Act for the PRC-wide entity.

Selection of the Adverse Facts Available Rate

In sum, because the PRC-wide entity failed to respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate pursuant to section 776(b) of the Act for the PRC-wide entity.

Further, section 776(b) of the Act authorizes the Department to use as adverse facts available ("AFA") information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate

²³ See Redstar's Section A Questionnaire Response, dated December 5, 2007.

²⁴ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

²⁵ See Redstar's Section A Questionnaire Response, dated December 5, 2007.

²⁶ See 19 CFR 351.308(c).

information in a timely manner.”²⁷ Moreover, the Department will select a rate that ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁸

It is the Department’s practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.²⁹ In the instant investigation, as AFA, we have assigned to the PRC-wide entity a margin of 236.81 percent, the highest calculated rate on the record of this proceeding, which is the calculated rate assigned to Redstar. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

Consequently, we are applying a single antidumping rate – the PRC-wide rate – to all exporters which did not demonstrate entitlement to a separate rate, *i.e.*, all exporters other than Redstar. The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.³⁰

Fair Value Comparisons

To determine whether sales of EMD to the United States by Redstar were made at LTFV, we compared Export Price (“EP”) to NV, as described in the “Export Price” and “Normal Value” sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under

²⁷ See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

²⁸ See *Statement of Administrative Action* at 870. See also, *Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005).

²⁹ See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People’s Republic of China*, 65 FR 34660 (May 21, 2000), and accompanying Issues and Decision Memorandum at “Facts Available.”

³⁰ See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People’s Republic of China*, 67 FR 79049, 79054 (December 27, 2002).

section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for Red Star because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise warranted.

We calculated EP based on the packed cost and freight or delivered prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (foreign inland freight from the plant to the warehouse, domestic brokerage, and international freight) and a discount in accordance with section 772(c)(2)(A) of the Act.³¹

Normal Value

We compared NV to weighted-average EPs in accordance with section 777A(d)(1) of the Act. Further, section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. The Department’s questionnaire requires that the respondent provide information regarding the weighted-average FOPs across all of the company’s plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology ensures that the Department’s calculations are as accurate as possible.³² The Department calculated the FOPs using the weighted-average factor values for all of the facilities involved in producing the subject merchandise for the exporter. The Department calculated NV for each matching control number (“CONNUM”) based on the FOPs reported from the exporter’s supplier.

³¹ For a detailed description of all adjustments, see Memorandum to the File, “Electrolytic Manganese Dioxide from the People’s Republic of China: Analysis Memorandum for the Preliminary Determination: Guizhou Redstar Developing Import and Export Company Ltd. (March 19, 2008) (“Redstar’s Preliminary Analysis Memorandum”).

³² See, *e.g.*, *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People’s Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 19.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by the respondent for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian SVs. In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the Federal Circuit’s decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). A detailed description of all SVs used can be found in the Surrogate Value Memorandum and Redstar’s Preliminary Analysis Memorandum.

For this preliminary determination, in accordance with the Department’s practice, we used import values from the World Trade Atlas® online (“Indian Import Statistics”), which were published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POI to calculate SVs for the mandatory respondent’s material inputs. Where we found Indian Import Statistics to be unavailable or unreliable, we used information from *Chemical Weekly*, an Indian trade publication. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department’s practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.³³

Redstar reported that its supplier of EMD owns its own manganese carbonite mine, and therefore we should value manganese carbonite using the FOPs consumed to mine the ore. Our analysis of the relationship between Redstar’s producer and the mine, however,

³³ See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in the final determination (*Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004)).

indicates that the producer's and the mine's production are not vertically integrated. Therefore, we are valuing manganese carbonite using SV methodology.³⁴

In those instances where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index, as published in the *International Financial Statistics* of the International Monetary Fund.

Furthermore, with regard to the Indian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.³⁵ We are also guided by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized.³⁶ The Department bases its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import-based SVs. In addition, we excluded Indian import data from NME countries from our SV calculations.³⁷

We used Indian transport information to value the inland freight cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *www.infreight.com*. This source provides daily rates from six major points of origin to five destinations in India. The Department obtained a price quote on the first day of each month from June 2005 to May 2006 from each point of origin to each destination and averaged the data accordingly. We adjusted these rates for inflation. We determined the best available information for valuing rail freight to be

from *www.indianrailways.gov.in*. Consistent with the Department's practice, we used two sources to calculate an SV for domestic brokerage expenses.³⁸ These data were averaged with the February 2004–January 2005 data contained in the May 24, 2005, public version of Agro Dutch Industries Limited's ("Agro Dutch") response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India.³⁹ The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department first derived an average per-unit amount from each source, then adjusted each average rate for inflation. Finally, the Department averaged the two per-unit amounts to derive an overall average rate for the POI.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, available at <http://ia.ita.doc.gov/wages/index.html>. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.⁴⁰ If the NME wage rates are updated by the Department prior to issuance of the final determination, we will use the updated wage rate in the final LTFV determination.

To value electricity, we used data from the International Energy Agency *Key World Energy Statistics* (2003

edition). Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

The Department valued water using data from the Maharashtra Industrial Development Corporation (*www.midcindia.org*) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the "inside industrial areas" usage category and 193 for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements of Eveready Industries India Limited ("Eveready India"), producers of the subject merchandise from India, for fiscal year 2006 - 2007.⁴¹ For purposes of initiation, we used the audited financial statements of Manganese Ore (India) Ltd. ("MOIL"), a producer of the merchandise under consideration that has a fully integrated mining operation. We stated at the initiation of this investigation that we would not use the financial statements of Eveready India because its financial statements reflect a zero profit and it is the Department's practice to disregard financial statements that do not demonstrate a profit, where other surrogate financial data exist on the record.⁴² In the instant investigation, however, we find that because the respondent is a producer of EMD, and does not maintain a mining facility, it is inappropriate to use the financial statements of MOIL to calculate the surrogate financial ratios. Analysis of MOIL's financial statements indicates that, due to its integrated mining operations, MOIL's overall production is very capital intensive, requiring extensive overhead not experienced by enterprises that do not maintain their own mining facility, such as Redstar. Notwithstanding Redstar's claim to have an integrated mining operation, our analysis of Redstar's questionnaire responses, including its financial statements, indicates that Redstar's

⁴¹ See Surrogate Value Memorandum.

⁴² See *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1; see also *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and First New Shipper Review*, 72 FR 52052 (Sept. 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2), and *Notice of Initiation*.

³⁴ See Surrogate Value Memorandum.

³⁵ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

³⁶ See *Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompanying H.R. 3, H.R. Rep. 100-576 at 590* (1988).

³⁷ For a detailed description of all SVs used for each respondent, see Surrogate Value Memorandum.

³⁸ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19704 (April 17, 2006) (utilizing these same two sources), unchanged in the final determination (*Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006)). The Department averaged December 2003–November 2004 data contained in the February 28, 2005, public version of Essar Steel's response submitted in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. See also *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006), unchanged in the final results (*Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006)).

³⁹ See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005). See also Surrogate Value Memorandum.

⁴⁰ See Surrogate Value Memorandum.

operations do not involve the equipment or facilities required for mining and consequently do not reflect the costs associated with a mining operation, such as those incurred by MOIL. Therefore, because the production experience of MOIL is so different from Redstar's, we have determined, in accordance with past practice,⁴³ that it is not appropriate to utilize the MOIL financial statements for this preliminary determination. However, the only financial statements currently on the record of this proceeding are those of MOIL and Eveready India. Therefore, despite the fact that it is the Department's practice not to use a financial statement without a realized profit, for this preliminary determination we have determined to use the financial statements of Eveready India to calculate surrogate financial ratios, as they represent the best available record information for this preliminary determination. We encourage interested parties to submit alternate publicly available financial statements on the record in this proceeding for use in the final determination. Moreover, the Department will also attempt to identify additional publicly available data for use in determining the surrogate financial ratios for purposes of the final determination of this investigation.

Post-Preliminary Determination Supplemental Questionnaire

In reviewing Redstar's original and supplemental questionnaire responses, we have determined that certain reported items require additional supplemental information. We will issue a post-preliminary determination supplemental questionnaire to Redstar to address these and other deficiencies. For example, Redstar has not provided complete sales and cost reconciliations. Should Redstar not provide complete and adequate sales and cost reconciliations, the Department may not be able to conduct verification for this respondent and may have to resort to the use of AFA.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

⁴³ See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum at Comment 5.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Redstar upon which we will rely in making our final determination.

Combination Rates

In the *Notice of Initiation*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.⁴⁴ This practice is described in *Policy Bulletin 05.1*.⁴⁵

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Margin
Guizhou Redstar Developing Import and Export Company, Ltd.	Guizhou Redstar Developing Dalong Manganese Industrial Co., Ltd.	236.81%
PRC-Wide Entity*.	236.81%

*The PRC-wide entity includes Xiangtan.

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of

⁴⁴ See *Notice of Initiation*, 72 FR at 52852.

⁴⁵ See footnote 19, *supra*.

EMD, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs. See 19 CFR 351.309. A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice.⁴⁶ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing three days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. See 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act. At the hearing each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of

⁴⁶ See 19 CFR 351.310(c).

the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from Redstar on March 11, 2008. In addition, Redstar requested the extension of provisional measures from a four-month period to not longer than six months. Because this preliminary determination is affirmative, the request for postponement was made by the exporter accounting for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to not longer than six months.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: March 19, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-6165 Filed 3-25-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG57

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by the University

of Maryland Eastern Shore (UMES) contains all of the required information and warrants further consideration. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies and Monkfish Fishery Management Plans (FMPs). However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. This EFP, which would enable researchers to study the effects of climate on the distribution and catch rates of monkfish, would grant exemptions from the NE multispecies regulations as follows: Gulf of Maine (GOM) Rolling Closure Area III and NE multispecies effort control measures.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 10, 2008.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: DA8-055@noaa.gov. Include in the subject line "Comments on UMES Monkfish EFP."

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UMES monkfish EFP, DA8-055."

- Fax: (978) 281-9135.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, 978-281-9244.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted on February 20, 2008, by Andrea K. Johnson, Ph.D., Research Assistant Professor at UMES, for a project funded under the New England and Mid-Atlantic Fishery Management Councils' Monkfish Research Set-Aside (RSA) Program. The primary goal of this study is to investigate the influence of temperature on monkfish distribution and abundance, as well as determine age and growth patterns, spawning frequency, feeding rates, and cannibalism. This information will

provide information on the biology of monkfish that could be used to enhance the management of this species. This is the first year this project has been funded under the Monkfish RSA Program.

The project is scheduled to be conducted for 1 year, from May 2008 through April 2009. Four fishing industry collaborators using 95 Monkfish days-at-sea (DAS) that will be awarded to the project through the monkfish RSA Program would collect a total of 640 monkfish from three size categories. Three monkfish gillnet vessels fishing in the Southern Fishery Management Area will collect monkfish as part of otherwise normal fishing activities, and do not require an EFP. One vessel fishing in the Northern Fishery Management Area would collect monkfish from a location inside Rolling Closure Area III. This activity would require an exemption from the restrictions of Rolling Closure Area III at 50 CFR 648.81(f) that will be in effect during May 2008. It is expected that this location would provide access to large monkfish and would avoid gear interactions between the research gillnet gear and the trawl gear. Due to the high economic value associated with the NE multispecies DAS, the applicant is also requesting exemption from the NE multispecies effort control measures at § 648.80(a)(3)(vi) in order to create sufficient incentive for a commercial vessel to participate in this experiment in the NFMA. This would exempt the vessel from the need to use a NE Multispecies DAS when fishing in the GOM for these research trips. The vessel would be using a large (12-inch) (30-cm) mesh, so the bycatch of NE multispecies is expected to be minimal.

The vessel would make up to 40 trips (25 DAS) using gillnets that are 12-inch (30-cm) stretch mesh with a 3.5-inch (8.9-cm) diameter gauge web that is 12 meshes deep. Each net is 300 ft (91 m) long, and 100 nets would be hauled every 5 days in the spring, summer, and fall, with an average soak time of 120 hours. Five fish per week would be donated to UMES between May-December 2008, and February-April 2009. The smallest samples would measure 17 inches (44 cm) in length. Additional catch, within applicable size and possession limits, would be sold to help offset the costs of the research. As a consequence of the exemption from the need to use a NE Multispecies DAS, the vessel would not keep any regulated NE multispecies. Since these trips would be using gillnets with very large mesh, the bycatch of regulated NE multispecies is expected to be minimal.

The applicant may request 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 have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: March 19, 2008.

Emily H. Menashes

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

[FR Doc. E8-6190 Filed 3-25-08; 8:45 am]

BILLING CODE 3510-22-S

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 25, 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 oir_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 20, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Master Promissory Note.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 774,306.

Burden Hours: 387,153.

Abstract: The Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) and Federal Direct Unsubsidized Stafford/Ford Loan (Direct Unsubsidized Loan) MPN serves as the means by which an individual agrees to repay a Direct Subsidized Loan and/or Direct Unsubsidized Loan.

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 3566. 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. E8-6033 Filed 3-25-08; 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 27, 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 20, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Reading First Implementation Study: 2008–09.

Frequency: Biennially.

Affected Public: State, Local, or Tribal Gov't., SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 162.

Abstract: This purpose of this OMB package is to address requirements for conducting one component of the Reading First Implementation Study: 2008–09, state personnel interviews. This study will provide more comprehensive descriptions, and ultimately analysis, of RF implementation processes at the district and school levels. Additionally, interviews will provide information on the relationship between Reading First and other state reading initiatives (including Title I).

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 3629. 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. E8–6044 Filed 3–25–08; 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 25, 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 oir_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 21, 2008.

James Hyler,

Acting Leader, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Department of Education

Type of Review: Extension.

Title: Generic Plan for Customer Satisfaction Surveys and Focus Groups.

Frequency: Annually; one time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 70,000.

Burden Hours: 25,000.

Abstract: Customer satisfaction surveys and focus group discussions will be conducted by the Principal Offices of the Department of Education to measure customer satisfaction and establish and improve customer service standards as required by Executive Order 12862.

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 3569. 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. E8–6199 Filed 3–25–08; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The Office of Civilian Radioactive Waste Management (OCRWM) is soliciting comments on its proposal to request a three-year clearance by the Office of Management and Budget (OMB) for the proposed form: RW–SCWE–1, "Organization Climate and Safety Conscious Work Environment Survey."

DATES: Comments must be filed by May 27, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Mark Van Der Puy. To ensure receipt of the comments by the due date, submission by FAX (702-794-5557) or e-mail Mark_VanDerPuy@ymp.gov is recommended. The mailing address is U.S. Department of Energy, Office of Civilian Radioactive Waste Management, M/S 523 1551 Hillshire Drive, Suite A, Las Vegas, NV 89134. Alternatively, Mr. Van Der Puy may be reached by telephone at 1-800-225-6972.

FOR FURTHER INFORMATION CONTACT:

Copies of the proposed form may be obtained at <http://www.ocrwm.doe.gov/contact/outreach/shtml>. Alternatively, requests for additional information or copies of the proposed form may be directed to Mr. Van Der Puy at the address listed above.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for Comments

I. Background

OCRWM proposes to collect information from Federal, contractor, and national laboratory employees supporting the OCRWM mission with the proposed form: RW-SCWE-1, "Organization Climate and Safety Conscious Work Environment Survey." The purpose of this information would be to assess the organizational climate and Safety Conscious Work Environment (SCWE) as part of OCRWM's desire to continuously improve performance and comply with the employee protection requirements of 10 CFR 63.9, Employee Protection, and Section 211 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5851).

OCRWM, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35), is providing the general public and other Federal agencies the opportunity to comment on this proposed collection of information conducted by or in conjunction with OCRWM. Any comments received will help OCRWM to prepare the data request for OMB approval to maximize the utility of the information collected and to assess the impact of collection requirements on the public. OCRWM will seek approval by OMB of the collection under Section 3507(h) of the Paperwork Reduction Act of 1995.

The proposed form: RW-SCWE-1, "Organization Climate and Safety Conscious Work Environment Survey" is designed to invite Federal, contractor, and national laboratory employees who support the OCRWM mission to provide their opinions regarding a variety of topical areas. The information collected will be analyzed, shared with the employees and other interested parties, and used in planning and assessing management actions. It is anticipated that there will be approximately 200 Federal and 1,500 contractor and national laboratory employees responding electronically. Up to 50 paper responses may be collected from employees without access to computer work stations.

II. Current Actions

The current proposed action is a request to OMB for a three-year clearance for this data collection. Comments are requested on OCRWM's proposal to request this three-year clearance to collect information with the proposed form: RW-SCWE-1, "Organization Climate and Safety Conscious Work Environment Survey," which is available at <http://ocrwm.doe.gov/contact/outreach/shtml>.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed request discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency, and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Potential respondents will be given 21 days to complete the form. Can the

information be submitted by the due date?

D. The public reporting burden to complete the proposed form: RW-SCWE-1, "Organization Climate and Safety Conscious Work Environment Survey," is estimated at 25 minutes per respondent. Data will be collected on an annual basis. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that there are no costs to respondents, because such respondents are employees of Federal agencies, contractors, or national laboratories funded by OCRWM. Similarly, respondents who participate in planning, administration, analysis, and developing actions in response to the information collected are also employees of those same Federal agencies, contractors, or national laboratories. In your opinion, are there other costs associated with the collection of information that OCRWM did not anticipate?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential Data User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in their entirety in the request for OMB approval of the proposed form. They also will become a matter of public record.

Statutory Authority: Sections 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, March 21, 2008.

Alan B. Brownstein,

Chief Operating Officer, Office of Civilian Radioactive Waste Management.

[FR Doc. E8-6138 Filed 3-25-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Methane Hydrate Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

This notice announces a meeting of the Methane Hydrate Advisory Committee. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 24, 2008, 9 a.m. to 5:30 p.m., Friday, April 25, 2008, 8 a.m. to noon.

ADDRESSES: La Jolla Shores Hotel, 8110 Camino Del Oro, La Jolla, CA 92037.

FOR FURTHER INFORMATION CONTACT: Edith Allison, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202-586-1023.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy, and assist in developing recommendations and priorities for the Department of Energy Methane Hydrate Research and Development Program.

Tentative Agenda

Thursday, April 24

- Reports and discussion of key Department of Energy-supported field projects.
- Report and discussion of code comparison for various reservoir simulators.
- Report and discussion on methane hydrate role in global climate change.
- Report and discussion of the Minerals Management Service assessment of Gulf of Mexico methane hydrate resource.

Friday, April 25

- Report and discussion of Department's solicitation for new research and development projects.
- Report and discussion of international activities.
- Discussion of committee recommendations to the Secretary of Energy.

- Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Edith Allison at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 21, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8-6141 Filed 3-25-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 19, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08-53-000.

Applicants: Chandler Wind Partners, LLC.

Description: Terra-Gen Power LLC submits an application for authorization for indirect disposition of jurisdictional facilities etc.

Filed Date: 03/14/2008.

Accession Number: 20080318-0050.

Comment Date: 5 p.m. Eastern Time on Friday, April 4, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96-25-031; ER01-1363-009.

Applicants: Coral Power, L.L.C.; Coral Energy Management, LLC.

Description: Coral Power LLC and Coral Energy Management, LLC submit a second supplement to the 12/3/07 Notice of Change in Status.

Filed Date: 03/13/2008.

Accession Number: 20080317-0130.

Comment Date: 5 p.m. Eastern Time on Thursday, April 3, 2008.

Docket Numbers: ER99-3151-009; ER97-837-008; ER03-327-003; ER08-447-001; ER08-448-001; PSEG Nuclear LLC.

Applicants: PSEG Energy Resources & Trade LLC; Public Service Electric and Gas Company; PSEG Power Connecticut LLC; PSEG Fossil LLC.

Description: Amendment to Application of PSEG Energy Resources & Trade LLC, *et al.*

Filed Date: 03/13/2008.

Accession Number: 20080313-5142.

Comment Date: 5 p.m. Eastern Time on Thursday, April 3, 2008.

Docket Numbers: ER01-205-025; ER98-2640-023; ER98-4590-021; ER99-1610-029.

Applicants: Xcel Energy Services Inc.; Northern States Power Company; Public Service Company of Colorado; New Century Pub Svc Co. of Co.

Description: Southwestern Public Service Company submits a change in status report relating to their market-based rate authority.

Filed Date: 03/17/2008.

Accession Number: 20080319-0044.

Comment Date: 5 p.m. Eastern Time on Monday, April 7, 2008.

Docket Numbers: ER08-670-000.

Applicants: Illinois Power Co.

Description: Illinois Power Company and Ameren Illinois Transmission Company submits a revised Exhibit A to the Joint Ownership Agreement between AmerenIP and Ameren Transco, which the Commission accepted for filing on 9/17/07.

Filed Date: 03/14/2008.

Accession Number: 20080318-0008.

Comment Date: 5 p.m. Eastern Time on Friday, April 4, 2008.

Docket Numbers: ER08-671-000.

Applicants: Florida Power Corporation.

Description: Florida Power Corp. submits long-term Service Agreement between Progress Energy Florida, Inc and the City of Gainesville, Florida under PEF's Cost-Based Rates Tariff (CR-1), FERC Electric Tariff, Second Revised Volume 9.

Filed Date: 03/14/2008.

Accession Number: 20080318-0009.

Comment Date: 5 p.m. Eastern Time on Friday, April 4, 2008.

Docket Numbers: ER08-672-000.

Applicants: Entergy Services, Inc.

Description: Entergy Arkansas, Inc. submits the Thirty-Eighth Amendment to the Power Coordination, Interchange and Transmission Service Agreement

between EAI and Arkansas Electric Cooperative Corporation dated March 7, 2008.

Filed Date: 03/14/2008.

Accession Number: 20080318-0010.

Comment Date: 5 p.m. Eastern Time on Friday, April 4, 2008.

Docket Numbers: ER08-673-000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. on behalf of Entergy Operating Companies submits an executed Third Revised Network Integration Transmission Service Agreement with Cleco Power LLC.

Filed Date: 03/14/2008.

Accession Number: 20080318-0011.

Comment Date: 5 p.m. Eastern Time on Friday, April 4, 2008.

Docket Numbers: ER08-674-000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits the Title, Transfer, Assignment and Assumption Agreement with Dillon Wind LLC.

Filed Date: 03/17/2008.

Accession Number: 20080318-0012.

Comment Date: 5 p.m. Eastern Time on Monday, April 7, 2008.

Docket Numbers: ER08-675-000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Orange and Rockland Utilities, Inc. submits an amendment to its OATT FERC Electric Tariff, Original Volume 3 to be made effective 4/1/08.

Filed Date: 03/17/2008.

Accession Number: 20080318-0013.

Comment Date: 5 p.m. Eastern Time on Monday, April 7, 2008.

Docket Numbers: ER08-677-000.

Applicants: Western Kentucky Energy Corp.

Description: Western Kentucky Energy Corp. submits notices of cancellation of Rate Schedule 2, FERC Electric Tariff, Original Volume 2, Original Service Agreement 1 *et al.*

Filed Date: 03/14/2008.

Accession Number: 20080318-0017.

Comment Date: 5 p.m. Eastern Time on Friday, April 4, 2008.

Docket Numbers: ER08-678-000.

Applicants: LG&E Energy Marketing Inc.

Description: LG&E Energy Marketing Inc. submits a Generation Dispatch Support Services Agreement with Big Rivers Electric Corporation.

Filed Date: 03/14/2008.

Accession Number: 20080318-0018.

Comment Date: 5 p.m. Eastern Time on Friday, April 4, 2008.

Docket Numbers: ER08-679-000.

Applicants: Tallgrass Energy Partners.

Description: Tallgrass Energy Partners submits the FERC Electric Tariff, Original Volume 1.

Filed Date: 03/17/2008.

Accession Number: 20080318-0019.

Comment Date: 5 p.m. Eastern Time on Monday, April 7, 2008.

Docket Numbers: ER08-681-000.

Applicants: Maine Public Service Company.

Description: Maine Public Service Company submits informational filing setting forth the changed loss factor effective 3/1/08 together with back-up materials.

Filed Date: 03/17/2008.

Accession Number: 20080319-0047.

Comment Date: 5 p.m. Eastern Time on Monday, April 7, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08-35-000.

Applicants: New York State Electric & Gas Corp.

Description: Application of New York State Electric & Gas Corporation for supplemental authorization to issue securities under section 204 of the FPA.

Filed Date: 03/19/2008.

Accession Number: 20080319-5009.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 9, 2008.

Docket Numbers: ES08-37-000.

Applicants: Rochester Gas & Electric Corporation.

Description: Application of Rochester Gas and Electric Corporation for supplemental authorization to issue securities under section 204 of the FPA.

Filed Date: 03/19/2008.

Accession Number: 20080319-5039.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 9, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-6133 Filed 3-25-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 20, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96-312-180.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Co submits a Gas Transportation Agreement with Statoil Natural Gas, LLC.

Filed Date: 03/18/2008.

Accession Number: 20080319-0223.

Comment Date: 5 p.m. Eastern Time on Monday, March 31, 2008.

Docket Numbers: RP99-176-157.

Applicants: Natural Gas Pipeline Co Of America.

Description: Natural Gas Pipeline Company of America, LLC submits Original Sheet 26Q.02 & Original Sheet

26Q.03 to its FERC Gas Tariff, Sixth Revised Volume 1, to be effective April 1, 2008.

Filed Date: 03/19/2008.

Accession Number: 20080320-0026.

Comment Date: 5 p.m. Eastern Time on Monday, March 31, 2008.

Docket Numbers: RP08-274-000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits Second Revised Sheet 127 et al part of its FERC Gas Tariff, Third Revised Volume 1-A, to become effective April 14, 2008.

Filed Date: 03/17/2008.

Accession Number: 20080317-0223.

Comment Date: 5 p.m. Eastern Time on Monday, March 31, 2008.

Docket Numbers: RP08-275-000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits Original Sheet 10 et al to FERC Gas Tariff, Second Revised Volume 1, to be effective April 1, 2008.

Filed Date: 03/18/2008.

Accession Number: 20080319-0041.

Comment Date: 5 p.m. Eastern Time on Monday, March 31, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-6136 Filed 3-25-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 18, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08-50-000.

Applicants: EFS Parlin Holdings LLC.

Description: Self Certification Notice of EFS Parlin Holdings LLC.

Filed Date: 03/14/2008.

Accession Number: 20080314-5082.

Comment Date: 5 p.m. Eastern Time on Friday, April 04, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01-2214-010.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc.

submits its refund report related to refunds ordered by FERC.

Filed Date: 03/12/2008.

Accession Number: 20080314-0126.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 02, 2008.

Docket Numbers: ER06-18-012.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator Inc. submits proposed revisions to their Open Access Transmission and Energy Markets Tariff to comply with FERC's 2/12/08 Order.

Filed Date: 03/13/2008.

Accession Number: 20080317-0073.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER07-521-002.

Applicants: New York Independent System Operator, Inc.

Description: Status Report of New York Independent System Operator, Inc. Regarding Its Compliance With "Guideline Three" of the Commission's Rules on Long-Term Transmission Rights in Organized Markets.

Filed Date: 03/12/2008.

Accession Number: 20080312-5013.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 02, 2008.

Docket Numbers: ER07-1172-003; ER07-1315-003.

Applicants: Idaho Power Company.

Description: Idaho Power Co. submits Substitute First Revised Sheet 82-A et al. to FERC Electric Tariff, First Revised Volume 6, effective 9/4/07.

Filed Date: 03/17/2008.

Accession Number: 20080318-0016.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: ER08-80-000.

Applicants: The Detroit Edison Company.

Description: Arizona Public Service Co. submits their compliance filing, with changes to its Fourteenth Revised Volume 2 Open Access Transmission Tariff.

Filed Date: 03/17/2008.

Accession Number: 20080318-0058.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: ER08-245-001.

Applicants: PacifiCorp.

Description: PacifiCorp submits a refund report in accordance with the Commission Letter Order issued on 1/15/08.

Filed Date: 03/14/2008.

Accession Number: 20080318-0005.

Comment Date: 5 p.m. Eastern Time on Friday, April 04, 2008.

Docket Numbers: ER08-334-001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits proposed revisions to its Open Access Transmission Tariff etc. in compliance with FERC's 2/18/08 Order.

Filed Date: 03/12/2008.

Accession Number: 20080314-0101.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 02, 2008.

Docket Numbers: ER08-337-002.

Applicants: Watson Cogeneration Company.

Description: Watson Cogeneration Company submits revised asset appendix to its market-based rate application that includes a description

of the energy assets owned or controlled by EME and SCE.

Filed Date: 03/13/2008.

Accession Number: 20080317-0075.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-364-002.

Applicants: APX, Inc.

Description: APX, Inc. submits proposed revisions to its FERC Electric Tariff, First Revised Volume 10.

Filed Date: 03/14/2008.

Accession Number: 20080318-0007.

Comment Date: 5 p.m. Eastern Time on Friday, April 04, 2008.

Docket Numbers: ER08-494-001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC resubmits the corrected interconnection service agreement with Lookout WindPower, LLC *et al.*

Filed Date: 03/12/2008.

Accession Number: 20080314-0103.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 02, 2008.

Docket Numbers: ER08-506-001.

Applicants: Southern Company Services, Inc.

Description: Southern Companies *et al* submits an Amendment to their filing made on 1/31/08 of an unexecuted network integration transmission service agreement and network operating agreement with Florida Public Co.

Filed Date: 03/13/2008.

Accession Number: 20080317-0074.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-541-001.

Applicants: American Electric Power Service Corporation.

Description: The American Electric Power Service Corp on behalf of the AEP Operating Companies submits an amendment to the Revised Interconnection and Local Delivery Service Agreement 1448.

Filed Date: 03/17/2008.

Accession Number: 20080318-0015.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: ER08-657-000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp submits amendments to FERC Electric Tariff, Third Revised Volume 6.

Filed Date: 03/12/2008.

Accession Number: 20080314-0102.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 02, 2008.

Docket Numbers: ER08-658-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Wenning Poultry *et al.*

Filed Date: 03/13/2008.

Accession Number: 20080314-0110.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-659-000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Co submits Exhibit A, an executed copy of Amendment 1 to Contract for Electric Service with Bardstown Municipal Electric Light & Power.

Filed Date: 03/13/2008.

Accession Number: 20080314-0109.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-660-000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Bethlehem Renewable Energy, LLC *et al.*

Filed Date: 03/13/2008.

Accession Number: 20080314-0108.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-661-000.

Applicants: PacifiCorp.

Description: PacifiCorp submits First Revised Service Agreement 66 for Network Integration Transmission Service between PacifiCorp Energy and PacifiCorp Transmission.

Filed Date: 03/12/2008.

Accession Number: 20080314-0107.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 02, 2008.

Docket Numbers: ER08-662-000.

Applicants: UniSource Energy Development Company.

Description: UniSource Energy Development Co submits a power sales agreement with UNS Electric, Inc.

Filed Date: 03/12/2008.

Accession Number: 20080314-0127.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 02, 2008.

Docket Numbers: ER08-663-000.

Applicants: Nevada Power Company.

Description: Nevada Power Co submits a notice of cancellation of as Service Agreement for Network Integration Transmission Service with the City of Needles.

Filed Date: 03/13/2008.

Accession Number: 20080314-0106.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-664-000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc *et al*

submits proposed revisions to Appendix C, Section III.B of the Agreement of Transmission Facilities Owners *et al.*

Filed Date: 03/13/2008.

Accession Number: 20080314-0105.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-665-000.

Applicants: Eastland Power LLC.

Description: Eastland Power LLC submits an application for market-based authority, request for certain waivers, blanket authorizations and a request for expedited treatment.

Filed Date: 03/13/2008.

Accession Number: 20080314-0104.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-666-000.

Applicants: NRG Southaven LLC.

Description: Application of NRG Southaven LLC for market-based rate authority, expedited action, associated waivers, blanket approvals and notification of price reporting status.

Filed Date: 03/12/2008.

Accession Number: 20080314-0111.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 02, 2008.

Docket Numbers: ER08-667-000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas LLC submits a revised Network Integration Service Agreement for Network Integration Transmission Service with Piedmont Municipal Power Agency.

Filed Date: 03/13/2008.

Accession Number: 20080317-0071.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-668-000.

Applicants: Entergy Services, Inc.

Description: Entergy Louisiana LLC *et al* submits the First Revised Service Agreement 453 and Amended Interconnection and Operating Agreement ELL and EAI for the 789 natural gas fired combined-cycle.

Filed Date: 03/13/2008.

Accession Number: 20080317-0072.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-669-000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation submits amendments to the Open Access Transmission Tariff on file with FERC their FERC Electric Tariff, Third Revised Volume 6.

Filed Date: 03/13/2008.

Accession Number: 20080317-0070.

Comment Date: 5 p.m. Eastern Time on Thursday, April 03, 2008.

Docket Numbers: ER08-676-000.

Applicants: Winnebago Windpower LLC.

Description: Application of Winnebago Windpower LLC for order accepting initial tariff etc.

Filed Date: 03/17/2008.

Accession Number: 20080318-0014.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08-32-001.

Applicants: Noble Bellmont Windpark, LLC.

Description: Noble Bellmont Windpark, LLC et al submits a joint application for authorization to guarantee obligations related to debt financing of the wind energy projects being developed.

Filed Date: 03/14/2008.

Accession Number: 20080318-0048.

Comment Date: 5 p.m. Eastern Time on Monday, March 24, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08-67-000.

Applicants: Progress Energy, Inc.

Description: Order No. 890-A Compliance Filing of Progress Energy, Inc. on behalf of Carolina Power & Light Co. and Florida Power Corp. updating their Joint OATT.

Filed Date: 03/17/2008.

Accession Number: 20080317-5029.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-68-000.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits its order 890-A compliance filing, refiling its entire OATT, redesignated as FERC Electric Tariff, Fourth Revised Volume 1, to be effective 3/17/08.

Filed Date: 03/17/2008.

Accession Number: 20080317-4000.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-69-000.

Applicants: Tucson Electric Power Company.

Description: Order No. 890-A OATT Filing of Tucson Electric Power Company.

Filed Date: 03/17/2008.

Accession Number: 20080317-5041.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-70-000.

Applicants: UNS Electric, Inc.

Description: UNS Electric, Inc submits revised Open Access Transmission Tariff sheets as Exhibit A pursuant to Section 206 of the FPA and Order No. 890-A.

Filed Date: 03/17/2008.

Accession Number: 20080317-5042.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-71-000.

Applicants: Xcel Energy Services, Inc.

Description: Xcel Energy Services, Inc submits revised tariff sheets to their Joint Open Access Transmission Tariff pursuant to Order 890-A.

Filed Date: 03/17/2008.

Accession Number: 20080317-5047.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-72-000.

Applicants: NORTHWESTERN CORP.

Description: Order No. 890 OATT Filing of Northwestern Corporation.

Filed Date: 03/17/2008.

Accession Number: 20080317-5048.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-73-000.

Applicants: Puget Sound Energy, Inc.

Description: Order No. 890 OATT Filing of Puget Sound Energy, Inc.

Filed Date: 03/17/2008.

Accession Number: 20080317-5049.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-74-000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits revisions to its Open Access Transmission Tariff pursuant to Order 890-A.

Filed Date: 03/17/2008.

Accession Number: 20080317-5050.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-75-000.

Applicants: Entergy Services, Inc.

Description: Order No. 890-A Compliance Filing of Entergy Services, Inc.

Filed Date: 03/17/2008.

Accession Number: 20080317-5061.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-76-000.

Applicants: E.ON U.S. LLC; Kentucky Utilities Company; Louisville Gas & Electric Company.

Description: Order No. 890-A OATT Filing of E.ON U.S. LLC on behalf of Louisville Gas and Electric Co. and Kentucky Utilities Co.

Filed Date: 03/17/2008.

Accession Number: 20080317-5062.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-77-000.

Applicants: Florida Power & Light Company.

Description: Order No. 890-A OATT Filing of Florida Power & Light Company.

Filed Date: 03/17/2008.

Accession Number: 20080317-5065.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-78-000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits revised tariff sheets to conform its Open Access Transmission Tariff (OATT?) to the Order No. 890-A pro formal OATT MidAmerican Energy requests an effective date of March 17, 2008.

Filed Date: 03/17/2008.

Accession Number: 20080317-5074.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-79-000.

Applicants: Southern Company Services, Inc.

Description: Order No. 890-A OATT Compliance Filing of Southern Company Services, Inc.

Filed Date: 03/17/2008.

Accession Number: 20080317-5076.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-81-000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation Order No. 890-A compliance filing for its South Dakota OATT FERC Electric Tariff, Second Revised Volume No. 2 (SD).

Filed Date: 03/17/2008.

Accession Number: 20080317-5088.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-82-000.

Applicants: Avista Corporation.

Description: Order 890-A Compliance filing of Avista Corporation. Transmittal letter and Clean and Redline versions of Avista's OATT.

Filed Date: 03/17/2008.

Accession Number: 20080317-5090.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-83-000.

Applicants: Idaho Power Company.

Description: Order No. 890 OATT Filing of Idaho Power Company.

Filed Date: 03/17/2008.

Accession Number: 20080317-5092.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08-84-000.

Applicants: Deseret Generation & Transmission Co-op.

Description: Order No. 890 OATT Filing of Deseret Generation & Transmission Co-operative, Inc.

Filed Date: 03/17/2008.

Accession Number: 20080317-5107.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08–85–000.
Applicants: Sierra Pacific Resources Operating Company.

Description: Order No. 890–A OATT Compliance Filing of Sierra Pacific Resources Operating Companies.

Filed Date: 03/17/2008.

Accession Number: 20080317–5110.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08–86–000.

Applicants: Maine Public Service Company.

Description: Order No. 890 OATT Filing of Maine Public Service Company.

Filed Date: 03/17/2008.

Accession Number: 20080317–5115.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08–87–000.

Applicants: NewCorp Resources Electric Cooperative.

Description: Order No. 890 OATT Filing of NewCorp Resources Electric Cooperative, Inc.

Filed Date: 03/17/2008.

Accession Number: 20080317–5116.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08–88–000.

Applicants: PacifiCorp.

Description: Order No. 890–A OATT Filing of PacifiCorp.

Filed Date: 03/17/2008.

Accession Number: 20080318–5003.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08–89–000.

Applicants: Mid-Continent Area Power Pool.

Description: Order No. 890–A OATT Filing of Mid-Continent Area Power Pool.

Filed Date: 03/17/2008.

Accession Number: 20080318–5004.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08–90–000;

OA07–44–002.

Applicants: El Paso Electric Company.

Description: El Paso Electric Company's Order Nos. 890 and 890–A Compliance Filings.

Filed Date: 03/17/2008.

Accession Number: 20080318–5005.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08–91–000.

Applicants: Black Hills Power, Inc.; Powder River Energy Corp; Basin Electric Power Cooperative, Inc.

Description: Order No. 890–A OATT Filing of Black Hills Power, Inc., Basin Electric Power Cooperative, Inc., and Powder River Energy Corporation.

Filed Date: 03/17/2008.

Accession Number: 20080318–5006.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08–92–000.

Applicants: Entergy Services Inc.

Description: Motion of Entergy Services, Inc. For Limited Waiver of Order No. 890–A Compliance Requirement.

Filed Date: 03/17/2008.

Accession Number: 20080318–5027.

Comment Date: 5 p.m. Eastern Time on Monday, April 07, 2008.

Docket Numbers: OA08–93–000; OA07–111–001.

Applicants: South Carolina Electric & Gas Company.

Description: Order No. 890–A OATT Filing of South Carolina Electric & Gas Company.

Filed Date: 03/18/2008.

Accession Number: 20080318–5032.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 08, 2008.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR07–16–002.

Applicants: North American Electric Reliability Corp.

Description: Corrected Filing—Request of North American Electric Reliability Corporation for Approval of Amendment to 2008 Business Plan and Budget of Western Electricity Coordinating Council.

Filed Date: 03/17/2008.

Accession Number: 20080318–5017.

Comment Date: 5 p.m. Eastern Time on Friday, March 28, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC.

There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–6137 Filed 3–25–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1183; FRL–8546–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emissions Certification and Compliance Requirements for Nonroad Spark-ignition (SI) Engines (Renewal); EPA ICR No. 1695.09, OMB Control No. 2060–0338

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 25, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OAR-2007-1183, to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail to a-and-r-Docket@epa.gov or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center (Mailcode 2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code 6403J, Washington, DC 20460; telephone number: 202-343-9264; fax number: 202-343-2804; e-mail address: reyes-morales.nydia@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 15, 2008 (73 FR 2489), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR-2007-1183, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Air Docket is 202-566-1742.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains

copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: Emissions Certification and Compliance Requirements for Nonroad Spark-ignition (SI) Engines (Renewal).

ICR Numbers: EPA ICR No. 1695.09, OMB Control No. 2060-0338.

ICR Status: This ICR is scheduled to expire on March 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*; CAA), EPA is charged with issuing certificates of conformity for engine prototypes that comply with applicable emission standards. Such a certificate must be issued before engines produced after these prototypes may be legally introduced into commerce. EPA regulations pertaining to spark-ignition engines rated at or below 19 kilowatts (small SI engines) are found at 40 CFR part 90. Regulations pertaining to spark-ignition engines rated above 19 kilowatts ('large SI engines') are found at 40 CFR part 1048; recreational vehicle regulations are found at 40 CFR part 1051; testing requirements and compliance regulations that apply to multiple engine types are found at parts 1065 and 1068. Manufacturers electing to participate in an Averaging, Banking and Trading (ABT) Program are also required to submit information regarding the calculation, actual generation, and usage of credits in an initial report, end-of-the-year report, and final report.

These reports are used for certification and enforcement purposes. Manufacturers will also maintain records for eight years on the engine families included in the program. The CAA also mandates that EPA verify that manufacturers have successfully translated their certified prototypes into mass produced engines, and that these

engines comply with emission standards throughout their useful lives. Under the Production-line Testing (PLT) Program, manufacturers are required to test a sample of engines as they leave the assembly line. This self-audit program (referred to as the "PLT Program") allows manufacturers to monitor compliance with statistical certainty and minimize the cost of correcting errors through early detection. Through Selective Enforcement Audits (SEAs), EPA verifies that test data submitted by engine manufacturers is reliable and testing is performed according to EPA regulations. Compliance with emission regulations throughout the useful life of an engine is verified through the In-use Testing (In-use) Programs under which manufacturers test SI engines after a number of years of use. Participation in the PLT program is mandatory. The In-use Programs are voluntary for small SI engines, but mandatory for large SI engines. All manufacturers are subject to SEAs.

This information is collected by the Heavy-Duty and Nonroad Engines Group (HDNEG), Compliance and Innovative Strategies Division (CISD), Office of Transportation and Air Quality (OTAQ), Office of Air and Radiation (OAR), U.S. Environmental Protection Agency (EPA). Besides CISD, this information could be used by the Office of Enforcement and Compliance Assurance (OECA) and the Department of Justice for enforcement purposes. Non-confidential portions of the information submitted to EPA could be disclosed in a public database and over the Internet. This information is used by trade associations, environmental groups, and the public. Respondents usually submit this information in an electronic format and HDNEG stores it in a database.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,158 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities:

Entities potentially affected by these actions are manufacturers of marine spark-ignition engines.

Estimated Number of Respondents: 241.

Frequency of Response: Annual, quarterly and on occasion.

Estimated Total Annual Hour Burden: 279,182.

Estimated Total Annual Cost: \$26,167,036, includes \$7,004,857 annualized capital or O&M costs.

Changes in the Estimates: Overall burden hours are higher due to an agency adjustment; an increased number of respondents are anticipated for this collection.

Dated: March 20, 2008.

Sarah Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8-6172 Filed 3-25-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2005-0061; FRL-8355-1]

Azinphos-methyl: Product Cancellation Order and Amendments to Terminate Uses; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the *Federal Register* of Wednesday, February 20, 2008, concerning the cancellation of products and amendments to terminate uses of products containing azinphos-methyl. This document is being issued to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8589; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult

the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2005-0061. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this *Federal Register* document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

II. What Does this Correction Do?

FR Doc. E8-3112 published in the *Federal Register* of Wednesday, February 20, 2008 (73 FR 9328) (FRL-8349-8) is corrected as follows:

1. On page 9328, under **SUMMARY:** the third sentence is corrected to read: Subject to the terms and conditions described in Unit II below and except as provided in the existing stocks provisions of the cancellation order, the order terminates distribution and sale of AZM products labeled for use on Brussels sprouts and nursery stock effective as of February 20, 2008; and prohibits use of such products on Brussels sprouts and nursery stock effective September 30, 2008; terminates AZM use on walnuts, almonds, and pistachios effective October 30, 2009; and cancels all AZM products effective September 30, 2012.

2. On page 9328, the **DATES** Unit is corrected to read: **DATES:** This order is effective February 20, 2008.

3. On page 9329, under Unit II., Table 1., and in the fourth sentence, in the paragraph that follows Table 1., the EPA Registration number for the last entry which now reads: "WA030035" is corrected to read: "WA030025."

4. On page 9330, under Unit IV.2.a.ii., the EPA Registration number listed as WA030035 is corrected to read: WA030025.

5. On page 9330, the first sentence under Unit IV.2.b.i., is corrected to read: Use of products on Brussels sprouts and nursery stock is prohibited as of September 30, 2008.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 12, 2008.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8-6186 Filed 3-25-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0047; FRL-8353-3]

Barium Metaborate Registration Review; Antimicrobial Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for this registration review. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before June 24, 2008.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S.

Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at

<http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: For information about the pesticides included in this document, contact the specific Chemical Review Manager as identified in the table in Unit III.A. for the pesticide of interest.

For general questions on the registration review program, contact Peter Caulkins, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8000; fax number: (703) 308-8090; e-mail address: caulkins.peter@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be periodically reviewed. The goal is a review of a pesticide's registration every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is periodically reviewing pesticide registrations to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be

used without unreasonable adverse effects on human health or the environment. The implementing regulations establishing the procedures for registration review appear at 40 CFR

part 155. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment.

At present, EPA is opening registration review dockets for the case identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Pesticide Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Barium Metaborate 0632	EPA-HQ-OPP-2008-0047	Nathan Mottl 703-305-0208 mottl.nathan@epa.gov

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at http://www.epa.gov/oppsrrd1/registration_review/schedule.htm. Information on the Agency's registration review program and its implementing regulation may be seen at http://www.epa.gov/oppsrrd1/registration_review.

3. *Information submission requirements.* Anyone may submit data or information in response to this

document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

- Submitters must clearly identify the source of any submitted data or information.

- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

- As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests, antimicrobials, barium metaborate.

Dated: March 19, 2008.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E8-6182 Filed 3-25-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8546-7]

Causal Analysis of Biological Impairment in Long Creek: A Sandy-Bottomed Stream in Coastal Southern Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of a final report entitled, "Causal Analysis of Biological Impairment in Long Creek: A Sandy-Bottomed Stream in Coastal Southern Maine" (EPA/600/R-06/065F), which was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD).

ADDRESSES: The document is available electronically through the NCEA Web site at: <http://www.epa.gov/ncea>. A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1-800-490-9198; facsimile: 301-604-3408; e-mail: nscep@bps-lmit.com. Please provide your name, your mailing address, the title, and the EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: Information Management Team, National Center for Environmental Assessment (8623P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Telephone: 703-347-8561; e-mail: nceadc.comment@epa.gov.

SUPPLEMENTARY INFORMATION: This assessment presents results from a complex causal assessment of a biologically impaired, urbanized coastal watershed—the Long Creek watershed. The primary goals of this case study include the following.

First, the assessment serves as an example EPA Stressor Identification (SI) case study, whereby the report may help future assessors understand the SI process for other biologically impaired ecosystems and the scientific community better understand urban-related stressor interactions. Target audience members may include government agency and consulting firm scientists attempting to conduct their own case studies and managers interested in learning what the SI process is capable of.

Second, the assessment provides useful information for the specific environmental improvement of the Long Creek watershed. This is especially timely, as managers are currently considering options for promoting ecological recovery of the watershed.

The Long Creek watershed is biologically impaired and located primarily in South Portland, Maine. A relatively unimpaired upstream portion of the Red Brook watershed, adjacent to and immediately south of Long Creek, provides a reference condition and is also discussed in the report. The contributing watersheds of both streams are urbanized, home to industrial, commercial, and residential land uses. The Long Creek and Red Brook watersheds showcase a wide range of topics related to resource management including the environmental implications of urban land use for coastal regions and the interactions among multiple causes linked to biological impairment.

The Long Creek project team, consisting of the U.S. EPA and Maine Department of Environmental Protection, followed U.S. EPA's SI guidance to conduct the case study. A rudimentary knowledge of the SI process may assist report readers; U.S. EPA's CADDIS (Causal Analysis/Diagnosis Decision Information System) Web site, <http://www.epa.gov/caddis/>, provides causal assessors with the most recent SI methodology.

The project team identified four specific biological effects defining impairment and seven candidate causes of impairment. The biological effects include decreased Ephemeroptera, Plecoptera, and Trichoptera (EPT) generic richness, increased percentage of non-insect taxa individuals, increased Hilsenhoff Biotic Index (HBI) score, and absence of brook trout. Candidate causes include increased onsite organic production (or autochthony), decreased dissolved oxygen, altered flow regime (increased hydrologic flashiness, including decreased baseflow and increased peaks), decreased large woody debris, increased sediment, increased

temperature, and toxic substances (including, *e.g.*, metals and ionic strength).

Specific biological effects and candidate causes were evaluated at three impaired sites on Long Creek. Implications associated with interactions among probable causes of impairment are discussed in terms of this case study and causal assessment in general.

Dated: March 14, 2008.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8-6166 Filed 3-25-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8546-6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Veolia ES Technical Solutions, L.L.C., Port Arthur, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Decision on a No Migration Petition Reissuance.

SUMMARY: Notice is hereby given that exemptions to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act have been reissued to Veolia ES Technical Solutions, L.L.C., (Veolia) for two Class I injection wells located at Port Arthur, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Veolia, of the specific restricted hazardous wastes identified in this exemption, into Class I hazardous waste injection wells Nos. WDW-160 and WDW-358 at the Port Arthur, Texas facility, until November 30, 2018, unless EPA moves to terminate these exemptions under provisions of 40 CFR 148.24. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued

January 17, 2008. The public comment period closed on March 3, 2008. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: This action is effective as of March 14, 2008.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ-S), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665-7150.

Dated: March 14, 2008.

Miguel I. Flores,

Division Director, Water Quality Protection Division (6WQ).

[FR Doc. E8-6209 Filed 3-25-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-1021; FRL-8354-7]

Flutolanil and Its Metabolites; Withdrawal of Tolerance Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is withdrawing pesticide petition (PP 6F7070) at the request of the petitioner, Nichino America, Inc., because the data submitted to the Agency do not support the proposed indirect or inadvertent tolerances for flutolanil on corn and cotton.

FOR FURTHER INFORMATION CONTACT: Lisa Jones, Registration Division (7505P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9424; fax number: (703) 308-5320; e-mail address: jones.lisa@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

Although this action only applies to the registrant in question, it is directed to the public in general. Since various individuals or entities may be interested, the Agency has not attempted to describe all the specific

entities that may be interested in this action. If you have any questions regarding this action, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-1021. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

III. What Action is the Agency Taking?

EPA is announcing that Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808, has withdrawn its application to establish inadvertent or indirect tolerances for the fungicide flutolanil and its metabolites in or on the food commodities corn and cotton, as provided for in section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA issued a notice in the **Federal Register** of January 23, 2008 (73 FR 3967) (FRL-8345-7), which announced Nichino America, Inc.'s submission of pesticide petition (PP 6F7070). This petition requested that EPA amend 40 CFR 180.484 by establishing increased tolerances for residues of the fungicide flutolanil [N-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl) benzamide] and its metabolite, M-4, desisopropylflutolanil [N-3(3-hydroxyphenyl)-2-(trifluoromethyl) benzamide] for inadvertent or indirect tolerances in or on the food commodities corn, field, forage at 0.30 parts per million (ppm); corn, field, grain at 0.20 ppm; corn field, stover at 0.30 ppm; and cotton, undelinted seed at 0.20 ppm.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 13, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E8-6203 Filed 3-25-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8547-5]

Meeting of the Total Coliform Rule Distribution System Advisory Committee-Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of the Federal Advisory Committee Act, the United States Environmental Protection Agency (EPA) is giving notice of a meeting of the Total Coliform Rule Distribution System Advisory Committee (TCRDSAC). The purpose of this meeting is to discuss the Total Coliform Rule (TCR) revision and information about distribution systems issues that may impact water quality.

The TCRDSAC advises and makes recommendations to the Agency on revisions to the TCR, and on what information should be collected, research conducted, and/or risk management strategies evaluated to better inform distribution system contaminant occurrence and associated public health risks.

Topics to be discussed in the meeting include options for revising the Total Coliform Rule, for example, rule construct, monitoring provisions, system categories, action levels, investigation and follow-up, public notification, and other related topics. In addition, the Committee will discuss possible recommendations for research and information collection needs concerning distribution systems and topics for upcoming TCRDSAC meetings.

DATES: The public meeting will be held on Wednesday, April 9, 2008 (8:30 a.m. to 6 p.m., Eastern Time (ET)) and Thursday, April 10, 2008 (8 a.m. to 3 p.m., ET). Attendees should register for the meeting by calling Kate Zimmer at: (202) 965-6387 or by e-mail to kzimmer@resolv.org no later than April 4, 2008.

ADDRESSES: The meeting will be held at RESOLVE, 1255 Twenty-Third St., NW., Suite 275, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: For general information, contact Kate Zimmer of RESOLVE at (202) 965-6387. For technical inquiries, contact Sean Conley (conley.sean@epa.gov, (202) 564-1781), Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; fax number: (202) 564-3767.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Committee encourages the public's input and will take public comment starting at 5:30 p.m. on April 9, 2008, for this purpose. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals interested in presenting an oral statement may notify Crystal Rodgers-Jenkins, the Designated Federal Officer, by telephone at (202) 564-5275, no later than April 4, 2008. Any person who wishes to file a written statement can do so before or after a Committee meeting. Written statements received by April 4, 2008, will be distributed to all members before any final discussion or vote is completed. Any statements received on April 7, 2008, or after the meeting will become part of the permanent meeting file and will be forwarded to the members for their information.

Special Accommodations

For information on access or accommodations for individuals with disabilities, please contact Crystal Rodgers-Jenkins at (202) 564-5275 or by e-mail at: rodgers-jenkins.crystal@epa.gov. Please allow at least 10 days prior to the meeting to give EPA as much time to process your request.

Dated: March 20, 2008.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E8-6179 Filed 3-25-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0002; FRL-8356-3]

Nortel Government Solutions, Incorporated; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to the Nortel Government Solutions, Incorporated, in accordance with 40 CFR 2.309(c) and 2.308(h)(2). The Nortel Government Solutions, Incorporated, will perform work for OPP under an Interagency Agreement (IAG). Access to this information will enable Nortel Government Solutions, Incorporated., to fulfill the obligations of the IAG.

DATES: The Nortel Government Solutions, Incorporated, will be given access to this information on or before April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0786; e-mail address: croom.felicia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0002. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document

electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

II. Contractor Requirements

Under IAG No. GS-35F-4366G, which supports the OPP's regulatory efforts, the Nortel Government Solutions, Incorporated, will perform services that support the development of the Section Seven Tracking System (SSTS). The contractor will perform the following: Project management support; management support to the STSS WorkGroup to further prioritize system requirements; create a detailed design document; develop and implement a fully functional STSS integration into PRISM, and provide software testing and assist in placing STSS fully into productions. During the course of performing these duties, the contractor will require access to CBI/FIFRA data to complete the terms of the contract.

The OPP has determined that the IAG described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this IAG. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.309(c), 2.307(h), and 2.308(h)(2), this IAG with the Nortel Government Solutions, Incorporated., prohibits use of the information for any purpose not specified in the IAG; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the subcontractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, the Nortel Government Solutions, Incorporated, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to the Nortel Government Solutions, Incorporated, until the requirements in this document have been fully satisfied. Records of information provided under this IAG will be maintained by EPA Project Officers for this contract. All information supplied to the Nortel Government Solutions, Incorporated, by EPA for use in connection with this IAG will be returned to EPA when the Nortel

Government Solutions, Incorporated., have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: March 19, 2008.

Oscar Morales,

Acting Director, Office of Pesticide Programs.

[FR Doc. E8-6000 Filed 3-25-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0170; FRL-8356-4]

Registration Review; New Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before June 24, 2008.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket

materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: For information about a particular pesticide included in this document, contact the specific Chemical Review Manager as identified in the table in Unit III.A. for the pesticide of interest.

For general questions on the registration review program, contact Peter Caulkins, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8000; fax number: (703) 308-8090; e-mail address: caulkins.peter@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review published in the **Federal Register** of August 9, 2006, and effective on October 10, 2006 (71 FR 45719) (FRL-8080-4). You may also access the Procedural Regulations for Registration Review on the Agency's website at <http://www.epa.gov/fedrgstr/EPA-PEST/2006/August/Day-09/p12904.htm>. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be periodically reviewed. The goal is a review of a pesticide's registration every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is periodically reviewing pesticide registrations to assure that they continue to satisfy the FIFRA standard for

registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. The implementing regulations establishing the procedures for registration review appear at 40 CFR part 155. A pesticide's registration

review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE 1.—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Pesticide Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Acetic Acid, and Salts Case #4001	EPA-HQ-OPP-2008-0016	Joy Schnackenberg, (703) 308-8072, schnackenberg.joy@epa.gov
Carbon, Carbon Dioxide, and Saw dust Case #4019	EPA-HQ-OPP-2007-0705	Jennifer Howenstine, (703) 305-0741, howenstine.jennifer@epa.gov
Inorganic Nitrate/Nitrite Case #4052	EPA-HQ-OPP-2007-1118	Eric Miederhoff, (703) 347-8028, miederhoff.eric@epa.gov
Silica and Silicates Case #4081	EPA-HQ-OPP-2007-1140	James Parker, (703) 306-0469, parker.james@epa.gov
Glufosinate Ammonium Case #7224	EPA-HQ-OPP-2008-0190	Karen Santora, (703) 347-8781, santora.karen@epa.gov
Sulfur Case #0031	EPA-HQ-OPP-2008-0176	Veronique LaCapra, (703) 605-1525, lacapra.veronique@epa.gov
Propionic Acid, and Salts Case #4078	EPA-HQ-OPP- 2008-0024	Wilhelmena Livingston, (703) 308-8025, livingston.wilhelmena@epa.gov

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- i. An overview of the registration review case status.
- ii. A list of current product registrations and registrants.
- iii. **Federal Register** notices regarding any pending registration actions.
- iv. **Federal Register** notices regarding current or pending tolerances.
- v. Risk assessments.
- vi. Bibliographies concerning current registrations.
- vii. Summaries of incident data.
- viii. Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking

that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at http://www.epa.gov/oppsrrd1/registration_review/schedule.htm. Information on the Agency's registration review program and its implementing regulation may be seen at http://www.epa.gov/oppsrrd1/registration_review.

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- i. To ensure that EPA will consider data or information submitted, interested persons must submit the data

or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

ii. The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

iii. Submitters must clearly identify the source of any submitted data or information.

iv. Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

v. As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until

all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 13, 2008.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs

[FR Doc. E8-5999 Filed 3-25-08; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202-523-5793 or sis@fmc.gov).

Agreement No.: 011928-003.

Title: Maersk Line/HLAG Slot Charter Agreement.

Parties: A.P. Moller-Maersk A/S and Hapag-Lloyd AG (HLAG).

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would change the amount of space to be chartered, extend the minimum duration of the agreement and reflect that not all vessels on which HLAG receives space will be operated by Maersk.

Agreement No.: 012034.

Title: Hamburg Sud/Maersk Line Vessel Sharing Agreement.

Parties: Hamburg-Sud and A.P. Moeller-Maersk A/S.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement would authorize the parties to share vessel space between the U.S. East Coast and Australia/New Zealand.

Agreement No.: 200389-003.

Title: Houston Maritime Freight Handlers Discussion Agreement.

Parties: Barbours Cut Intermodal Services Ltd.; Barbours Cut Truck Office, Inc.; Ceres Gulf, Inc.; Chaparral Stevedoring Co. of Texas, Inc.; CT Stevedoring, Inc.; GP Terminals LLC; Ports of America Texas, Inc.; Shippers

Stevedoring Co.; Southern Stevedoring Co., Inc.; and SSA Gulf, Inc.

Filing Party: Walter A. Niemand, Chairman; Houston Maritime Freight Handlers Discussion Agreement; 1717 East Loop, Suite 200; Houston, TX 77029

Synopsis: The amendment would clarify language, update the current membership, and restate the entire agreement.

Agreement No.: 201179.

Title: Lease and Operating Agreement between PRPA and Growmark, Inc.

Parties: Growmark, Inc. and the Philadelphia Regional Port Authority (PRPA).

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue, NW.; 10th Floor; Washington, DC 20036.

Synopsis: The agreement provides for the lease and operation of terminal facilities at the Port of Philadelphia.

Dated: March 21, 2008.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8-6161 Filed 3-25-08; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

DLR Mercantile Shipping USA Inc., 295 Parkside Drive, Suffern, NY 10901. Officers: Gary S. Neiman, Director, (Qualifying Individual), Charles J. Marrale, Director.

RS Auto Expo and Shipping Line, 174 Rue Jubile, Qt Residence Du, Benin BP 12.907, Lome, Togo. Ali Hussein Hakim, Sole Proprietor.

Windsor Shipping, Inc., 88-29 183rd Street, Hollis, Queens, NY 11423.

Officer: Ramtaigh Singh, President, (Qualifying Individual).

PAX Global Cargo U.S.A., LLC, 9800 S. La Cienega Blvd., Inglewood, CA 90301. Officer: Chul H. Choi, Member, (Qualifying Individual).

Premium Cargo, LLC, 8248 NW 68th Street, Miami, FL 33166, Officers: Sandra N. Fernandez, Member, (Qualifying Individual), Jeannina M. Sieaja, Member.

TBS Logistics Incorporated dba Magnum Lines, 11731 Jones Road, Suite 200, Houston, TX 77070. Officers: Judi Copeland, Vice President, (Qualifying Individual), Donald Rawlings, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Nova World International, LLC dba Nova Shipping, 5304 Pond Bluff, West Bloomfield, MI 48323. Officer: Yevgenly R. Epshteyn, President, (Qualifying Individual).

Office Shop Inc. dba Logistics Miami, 7812 NW 46th Street, Miami, FL 33166. Officers: Juan A. Guevara, President, (Qualifying Individual), Maritza Pasquier, Vice President.

Cargo Logistics Group, Inc., 7380 Coca Cola Drive, Hanover, MD 21076. Officers: Cathy Hammontree, Operations Specialist, (Qualifying Individual), David M. Cook, President.

Portugalia Sales, Inc., 109 Ferry Street, Newark, NJ 07105. Officers: Carlos G. Fonseca, President, (Qualifying Individual), Rosa M. Mocreia, Vice President.

PISC International, Inc., 601 Century Plaza Drive, Houston, TX 77073. Officers: Mohammed S Hassan Mohamed, Operations Manager, (Qualifying Individuals), Michael J. Hellail, President.

Gibert Logistics LLC, 27 Neron Place, New Orleans, LA 70118. Officer: Stewart Gibert, Sr., Member/Manager, (Qualifying Individual).

AMT Trust LLC dba BR Courier LLC, 501 Washington Avenue, Carlstadt, NJ 07072. Officers: Aloysio Bayde, Managing Member, (Qualifying Individual), Jose Moreira, Member.

FJ Logistics Services, LLC, 1307 West Sixth Street, Corona, CA 92882. Officers: Winfred Kizu, General Manager, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Golden Egg Warehouse Logistics, 5401 San Leandro Street, Unit C, Oakland, CA 94601. Chau Thai, Sole Proprietor.

Dated: March 21, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8-6159 Filed 3-25-08; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.: 015247NF.

Name/Address: Amerindias, Inc.,
5220 NW 72nd Avenue, Miami, FL
33166.

Date Reissued: February 21, 2008.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E8-6158 Filed 3-25-08; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License Number: 017279NF.

Name: Unicom Trans, Inc.

Address: 15500 S. Western Ave.,
Gardena, CA 90249.

Order Published: FR: 03/12/08
(Volume 73, No. 49, Pg. 13236).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E8-6163 Filed 3-25-08; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E8-5250) published on pages 14250-24251 of the issue for Monday, March 17, 2008.

Under the Federal Reserve Bank of Chicago heading, the entry for Roger L. Lehmann and Elizabeth E. Lehmann, Harvard, Illinois, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Roger L. Lehmann and Elizabeth E. Lehmann*, Harvard, Illinois, Mark W. Lehmann, Belle Mead, New Jersey, and Philip J. Lehmann, Harvard, Illinois; to retain voting shares of Harvard Bancshares, Inc., Harvard, Illinois, and thereby indirectly retain voting shares of Harvard State Bank, Harvard, Illinois.

Comments on this application must be received by March 31, 2008.

Board of Governors of the Federal Reserve System, March 21, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8-6160 Filed 3-25-08; 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 21, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Minier Financial, Inc. Employee Stock Ownership Plan w/401(k) Provisions*; to acquire up to an additional 24 percent, for a total of up to 51 percent, of the voting shares of Minier Financial, Inc., and thereby indirectly acquire additional voting shares of First Farmers State Bank, all of Minier, Illinois.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Wells Fargo & Company*, San Francisco, California; to acquire 100 percent of the voting shares of The Jackson State Bank & Trust, Jackson, Wyoming; and thereby indirectly acquire voting shares of First State Bank of Pinedale, Pinedale, Wyoming; Sheridan State Bank, Sheridan, Wyoming; Shoshone First Bank, Cody, Wyoming; and to acquire certain assets and assume certain liabilities of United Bancorporation of Wyoming, Inc., Jackson, Wyoming.

Board of Governors of the Federal Reserve System, March 21, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8-6162 Filed 3-25-08; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("Commission" or "FTC").

ACTION: Notice.

SUMMARY: The FTC is seeking public comments on its proposal to extend through July 31, 2011, the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in the

Children's Online Privacy Protection Act Rule ("COPPA Rule"), which will expire on July 31, 2008. The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the PRA.

DATES: Comments must be submitted on or before May 27, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "FTC COPPA PRA Comment: FTC File No. P084511" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission, Room H-135 (Annex J), 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential."¹

Comments filed in electronic form should be submitted by following the instructions on the web-based form at <https://secure.commentworks.com/ftc-COPPARule>. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the <https://secure.commentworks.com/ftc-COPPARule> weblink. If this notice appears at www.regulations.gov, you may also file an electronic comment through that website. The Commission will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC website, to the extent practicable, at www.ftc.gov. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the

public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information regarding this proceeding should be addressed to Mamie Kresses, (202) 326-2070, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., N.W., Mail Drop NJ-3212, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the COPPA Rule, 16 CFR Part 312 (OMB Control Number 3084-0117). The COPPA Rule prohibits unfair and deceptive acts and practices in connection with the collection, use, and disclosure of personally identifiable information from and about children on the Internet.

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of the required collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Estimated annual hours burden: 2,000 hours (rounded to the nearest thousand)

(a) *Disclosure Requirements:* 1,800 hours (rounded to the nearest hundred)

The COPPA Rule contains certain statutorily-required notice requirements, which constitute a "collection of information" under the PRA:

(1) the Rule requires each website and online service directed to children, and any website or online service with actual knowledge that it is collecting personal information from children, to provide notice of how it collects, uses, and discloses such information and, with exceptions, to obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure;

(2) the Rule requires the operator to provide the parent with notice of the specific types of personal information being collected from the child, to give the parent the opportunity to forbid the operator at any time from collecting, using, or maintaining such information, and to provide reasonable means for the parent to obtain the information;

(3) the Rule prohibits a child's participation in a game, a prize offer, or other activity from being conditioned on the child's disclosure of more personal information than is "reasonably necessary" for the child to participate in that activity; and

(4) the Rule requires website and online service operators to establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

The FTC staff retains its estimate that roughly 30 new web entrants each year will fall within the Rule's coverage and that, on average, new entrants will spend approximately 60 hours crafting a privacy policy, designing mechanisms to provide the required online privacy notice and, where applicable, the direct notice to parents.² Accordingly, staff estimates that complying with the Rule's disclosure requirements will require approximately 1,800 hours (30 new web entrants x 60 hours per entrant). Consistent with prior estimates, FTC staff estimates that the time spent on compliance would be apportioned five to one between legal (lawyers or similar professionals) and technical (computer programmers) personnel. Staff therefore estimates that lawyers or similar professionals who craft privacy policies will account for 1,500 of the 1,800 hours required. Computer programmers responsible for posting privacy policies and

² Although staff cannot determine with any degree of certainty the number of new entrants potentially subject to the Rule, it believes its estimate is reasonable. The Commission received no comments challenging staff's prior PRA analyses in its prior requests for renewed clearance for the Rule or when it most recently sought comment on the Rule itself (70 FR 21107, 21109, April 22, 2005). Accordingly, staff retains those estimates for the instant PRA analysis. For the same reasons, staff retains its prior estimate of 60 hours per new entrant.

¹ Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

implementing direct notices and parental consent mechanisms will account for the remaining 300 hours.

Website operators that have previously created or adjusted their sites to comply with the Rule will incur no further burden associated with the Rule, unless they opt to change their policies and information collection in ways that will further invoke the Rule's provisions. Moreover, staff believes that existing COPPA-compliant operators who introduce additional sites beyond those they already have created will incur minimal, if any, incremental PRA burden. This is because such operators already have been through the start-up phase and can carry over the results of that to the new sites they create.

(b) *Voluntary Reporting Requirements for Safe Harbor Participants*: 100 hours (rounded to the nearest hundred)

Operators can comply with the Rule by meeting the terms of industry self-regulatory guidelines that the Commission approves after notice and comment.³ While the submission of industry self-regulatory guidelines to the agency is voluntary, the Rule includes specific reporting requirements that all safe harbor applicants must provide to receive Commission approval. Staff retains its estimate that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit its safe harbor proposal in accordance with Section 312.12(c) of the Rule. Industry sources have confirmed that this estimate is reasonable and advised that all of this time would be attributable to the efforts of lawyers. Given that several safe harbor programs are already available to website operators, FTC staff believes that it is unlikely that more than one additional safe harbor applicant will submit a request within the next three years of PRA clearance sought. Thus, annualized burden attributable to this requirement would be approximately 85 hours per year (260 hours ÷ 3 years) or, roughly, 100 hours. Staff believes that most of the records submitted with a safe harbor request would be those that these entities have kept in the ordinary course of business, and that any incremental effort associated with maintaining the results of independent assessments or other records under Section 312.10(d)(3) also would be in the normal course of business. In accordance with the regulations implementing the PRA, the burden

estimate excludes effort expended for these activities. 5 CFR 1320.3(b)(2).

Accordingly, FTC staff estimates that total burden per year for disclosure requirements affecting new web entrants and reporting requirements for safe harbor applications would be approximately 2,000 hours, rounded to the nearest thousand.

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff conservatively assumes hourly rates of \$150 and \$35, respectively, for lawyers or similar professionals and computer programmers.⁴ Based on these inputs, staff further estimates that associated annual labor costs for new entrants would be \$235,000 [(1,500 hours x \$150 per hour for legal) + (300 hours x \$35 per hour for computer programmers)] and \$15,000 for safe harbor applicants (100 hours per year x \$150 per hour), for a total labor cost of \$250,000.

Non-labor costs: Because websites will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the sole costs incurred by the websites are the aforementioned estimated labor costs. Similarly, industry members should already have in place the means to retain and store the records that must be kept under the Rule's safe harbor recordkeeping provisions, because they are likely to have been keeping these records independent of the Rule.

William J. Blumenthal

General Counsel

[FR Doc. E8-6211 Filed 3-25-08; 8:45 am]

BILLING CODE 6750-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0168]

Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions relating to FDA's electronic records and electronic signatures.

DATES: Submit written or electronic comments on the collection of information by May 27, 2008.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in

³ See Section 312.10(c). Approved self-regulatory guidelines can be found on the FTC's website at http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html.

⁴ FTC staff estimates average legal costs at \$150 per hour, which is roughly midway between Bureau of Labor Statistics (BLS) mean hourly wages shown for attorneys (approximately \$55) in the most recent whole-year data available online (2006) and what staff believes may more generally reflect hourly attorney costs (\$250) associated with Commission information collection activities. The \$35 estimate for computer programmers is also conservatively based on the most recent whole-year data available online from the BLS (2006 National Compensation Survey and 2006 Occupational Employment and Wage Statistics).

the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Electronic Records; Electronic Signatures—21 CFR Part 11 (OMB Control Number 0910-0303)—Extension

The FDA regulations in 21 CFR part 11 (part 11) provide criteria for acceptance of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Under these regulations, records and reports may be submitted to FDA electronically provided the agency has stated its ability to accept the records electronically in an agency-established public docket and that the other requirements of part 11 are met.

The recordkeeping provisions in part 11 (§§ 11.10, 11.30, 11.50, and 11.300) require standard operating procedures to assure appropriate use of, and precautions for, systems using electronic records and signatures; (1) § 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) § 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic

records; (3) § 11.50 specifies procedures and controls for persons who use electronic signatures; and (4) § 11.300 specifies controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords. The reporting provision (§ 11.100) requires persons to certify in writing to FDA that they will regard electronic signatures used in their systems as the legally binding equivalent of traditional handwritten signatures.

The burden created by the information collection provision of this regulation is a one-time burden associated with the creation of standard operating procedures, validation, and certification. The agency anticipates the use of electronic media will substantially reduce the paperwork burden associated with maintaining FDA required records.

The respondents will be businesses and other for-profit organizations, state or local governments, Federal agencies, and nonprofit institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
11.100	4,500	1	4,500	1	4,500

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
11.10	2,500	1	2,500	20	50,000
11.30	2,500	1	2,500	20	50,000
11.50	4,500	1	4,500	20	90,000
11.300	4,500	1	4,500	20	90,000
Total					280,000

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

Dated: March 19, 2008.
Jeffrey Shuren,
Associate Commissioner for Policy and Planning.
 [FR Doc. E8-6055 Filed 3-25-08; 8:45 am]
BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0169]

Agency Information Collection Activities; Proposed Collection; Comment Request; Infant Formula Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements related to the recall of infant formula.

DATES: Submit written or electronic comments on the collection of information by May 27, 2008.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Jonna Capezzuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB

for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Infant Formula Recall Regulations—21 CFR 107.230, 107.240, 107.250, 107.260, and 107.280 (OMB Control Number 0910-0188)—Extension

Section 412(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(e)) provides that if the manufacturer of an infant formula has knowledge that reasonably supports the conclusion that an infant formula processed by that manufacturer has left its control and may not provide the nutrients required in section 412(i) of the act or is otherwise adulterated or misbranded, the manufacturer must promptly notify the Secretary of Health and Human Services (the Secretary). If the Secretary determines that the infant formula presents a risk to human health, the manufacturer must immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary. Section 412(f)(2) of the act states that the Secretary shall by regulation prescribe the scope and extent of recalls of infant formula necessary and appropriate for the degree of risk to human health presented by the formula subject to recall. FDA's infant formula recall regulations in part 107 (21 CFR

part 107) implement these statutory provisions.

Section 107.230 requires each recalling firm to conduct an infant formula recall with the following elements: (1) Evaluate the hazard to human health, (2) devise a written recall strategy, (3) promptly notify each affected direct account (customer) about the recall, and (4) furnish the appropriate FDA district office with copies of these documents. If the recalled formula presents a risk to human health, the recalling firm must also request that each establishment that sells the recalled formula post (at point of purchase) a notice of the recall and provide FDA with a copy of the notice. Section 107.240 requires the recalling firm to conduct an infant formula recall with the following elements: (1) Notify the appropriate FDA district office of the recall by telephone within 24 hours, (2) submit a written report to that office within 14 days, and (3) submit a written status report at least every 14 days until the recall is terminated. Before terminating a recall, the recalling firm is required to submit a recommendation for termination of the recall to the appropriate FDA district office and wait for written FDA concurrence (§ 107.250). Where the recall strategy or implementation is determined to be deficient, FDA may require the firm to change the extent of the recall, carry out additional effectiveness checks, and issue additional notifications (§ 107.260). In addition, to facilitate location of the product being recalled, the recalling firm is required to maintain distribution records for at least 1 year after the expiration of the shelf life of the infant formula (§ 107.280).

The reporting and recordkeeping requirements described previously are designed to enable FDA to monitor the effectiveness of infant formula recalls in order to protect babies from infant formula that may be unsafe because of contamination or nutritional inadequacy or otherwise adulterated or misbranded. FDA uses the information collected under these regulations to help ensure that such products are quickly and efficiently removed from the market.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
107.230	2	1	2	4,500	9,000
107.240	2	1	2	1,482	2,964

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
107.250	2	1	2	120	240
107.260	1	1	1	650	650
Total					12,854

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. No burden has been estimated for the recordkeeping requirement in § 107.280 because these records are maintained as a usual and customary part of normal business activities. Manufacturers keep infant formula distribution records for the prescribed period as a matter of routine business practice.

The reporting burden estimate is based on agency records, which show that there are five manufacturers of infant formula and that there have been, on average, two infant formula recalls per year for the past 3 years.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

Dated: March 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-6060 Filed 3-25-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0170]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit to FDA information upon which the manufacturer or distributor has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe.

DATES: Submit written or electronic comments on the collection of information by May 27, 2008.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Notification for a New Dietary Ingredient—21 CFR 190.6 (OMB Control Number 0910-0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350b(a)) provides that at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient, a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit to FDA (as delegate for the Secretary of Health and Human Services) information upon which the manufacturer or distributor has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe. Part 190 (21 CFR part 190) implements these statutory provisions. Section 190.6(a) requires each

manufacturer or distributor of a dietary supplement containing a new dietary ingredient, or of a new dietary ingredient, to submit to the Office of Nutrition, Labeling, and Dietary Supplements notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6(b) requires that the notification include the following: (1) The complete name and address of the manufacturer or distributor, (2) the

name of the new dietary ingredient, (3) a description of the dietary supplements that contain the new dietary ingredient, and (4) the history of use or other evidence of safety establishing that the dietary ingredient will reasonably be expected to be safe.

The notification requirements described previously are designed to enable FDA to monitor the introduction into the food supply of new dietary ingredients and dietary supplements

that contain new dietary ingredients, in order to protect consumers from unsafe dietary supplements. FDA uses the information collected under these regulations to help ensure that a manufacturer or distributor of a dietary supplement containing a new dietary ingredient is in full compliance with the act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
190.6	71	1	71	20	1,420

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because the agency is requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the act. However, the agency estimates that extracting and summarizing the relevant information from the company's files and presenting it in a format that will meet the requirements of section 413 of the act will require a burden of approximately 20 hours of work per submission.

The estimated number of premarket notifications and hours per response is an average based on the agency's experience with notifications received during the last 3 years (i.e., 2005, 2006, and 2007), and information from firms that have submitted recent premarket notifications.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

Dated: March 19, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-6061 Filed 3-25-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0173]

Agency Information Collection Activities; Proposed Collection; Comment Request; Appeals of Science-Based Decisions Above the Division Level at the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements for appeals of science-based decisions above the division level at the Center for Veterinary Medicine (CVM).

DATES: Submit written or electronic comments on the collection of information by May 27, 2008.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All

comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Denver Presley, Jr., Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Appeals of Science-Based Decisions Above the Division Level at the Center for Veterinary Medicine—21 CFR Part 10.75 (OMB Control Number 0910-0566)—Extension

CVM's "Guidance for Industry #79—Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary

Medicine" describes the process by which CVM formally resolves disputes relating to scientific controversies. A scientific controversy involves issues concerning a specific product regulated by CVM related to matters of technical expertise and requires specialized education, training, or experience to be understood and resolved. Further, the guidance details information on how the agency intends to interpret and apply provisions of the existing regulations regarding internal agency review of decisions. In addition, the guidance outlines the established recommended procedures for persons who are applicants, including sponsor

applicants or manufacturers, for animal drugs or other products regulated by CVM, that wish to submit a request for review of a scientific dispute. When an applicant has a scientific disagreement and a written decision by CVM, the applicant may submit a request for review of that decision by following the established agency channels of supervision for review.

Respondents to this collection of information are applicants that wish to submit a request for review of a scientific dispute.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.75	2	4	8	10	80

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimated annual reporting burden is based on CVM's experience over the past 3 years in handling formal appeals for scientific disputes. The number of respondents multiplied by the annual frequency of response equals the total annual responses. The number of hours per response is based on discussions with industry and may vary depending on the complexity of the issue(s) involved and the duration of the appeal process.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

Dated: March 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-6065 Filed 3-25-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee

of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anesthetic and Life Support Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 7, 2008, from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD, 301-948-8900.

Contact Person: Teresa Watkins, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, Rm. 1093), Rockville, MD 20857, 301-827-7001, FAX: 301-827-6776, e-mail: Teresa.Watkins@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572) in Washington, DC area), code 3014512529. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On May 7, 2008, the committee will discuss new drug

application (NDA) 22-244, fospropofol disodium injection (35 milligrams/milliliter) (proposed tradename Aquavan), MGI Pharma, Inc., for the proposed indication of sedation in adult patients undergoing diagnostic or therapeutic procedures.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 23, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 15, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to

speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 16, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Teresa Watkins at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/oc/advisory/default.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 20, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8-6193 Filed 3-25-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 1, 2008, from 8:30 a.m. to 5:30 p.m. and on May 2, 2008, from 8:30 a.m. to 4 p.m.

Location: Hilton Hotel, Washington DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Donald W. Jehn or Pearlina K. Muckelvene, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike (HFM-71), Rockville, MD 20852, 301-827-0314, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014519516. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On the morning of May 1, 2008, the committee will hear updates on the following: (1) Summaries of August 22-23, 2007, and January 9-10, 2008, meetings of the Department of Health and Human Services Advisory Committee on Blood Safety and Availability; (2) 2007 West Nile Virus Epidemiology and the use of nucleic acid tests to reduce the risk of transmission of West Nile Virus in Whole Blood and blood components for transfusion and Human Cells, Tissues, and Cellular and Tissue-based products (HCT/PS); (3) implementation of blood donor screening for infection with *Trypanosoma cruzi* and the use of serological tests to reduce the risk of transmission of *T. cruzi* infection in Whole Blood and blood components for transfusion and HCT/PS; (4) FDA's proposal to lower the minimum recommended lot release titer for measles antibodies in Immune Globulin Intravenous (Human) and Immune Globulin Subcutaneous (Human); (5) Gambro/Fenwal Post Approval Surveillance Study of Platelet Outcomes, Release Tested (PASSPORT) Post Marketing Study—7 Day Platelets; (6) Experience with 7 Day Platelets Versus 5 Day Platelets; and (7) FDA Perspective on the PASSPORT Study. These updates will be followed by informational presentations on FDA's Center for Biologics Evaluation and Research Safety Teams related to blood and tissue. In the afternoon, the committee will discuss the Biomedical Excellence for Safer Transfusion Committee Report on red blood cell recovery standards. On the morning of May 2, 2008, the committee will discuss Lev Pharmaceutical's plasma-derived C1 esterase inhibitor (CINRYZE). Then, in the afternoon the committee will review

the research programs in the Laboratory of Hepatitis and Related Emerging Agents, Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review, CBER Site Visit of November 8, 2007.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: The entire day of May 1, 2008, and on May 2, 2008, from 8:30 a.m. to 3:15 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 23, 2008. Oral presentations from the public will be scheduled between approximately 11:50 a.m. and 12:20 p.m. and between approximately 4:20 p.m. and 4:50 p.m. on May 1, 2008, and between approximately 10:40 a.m. and 11:10 a.m. and 2:40 p.m. and 3 p.m. on May 2, 2008. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 15, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 16, 2008.

Closed Committee Deliberations: On May 2, 2008, between 3:15 p.m. and 4 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the

agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Pearline K. Muckelvene at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/oc/advisory/default.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 20, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8-6208 Filed 3-25-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0158] (formerly Docket No. FDA-2008-N-0131)

Frozen Concentrate for Lemonade Deviating From Identity Standard; Temporary Permit for Market Testing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of February 29, 2008 (73 FR 11095). The document announced that a temporary permit has been issued to Florida's Natural Growers, to market test a product designated as "Frozen Concentrate for Lemonade 3+1 Ratio." The document was published with an incorrect value for the Brix (measure of concentration of sugars in juice). This document corrects the error.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS-820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-2371.

SUPPLEMENTARY INFORMATION: In FR Doc. E8-3912, appearing on page 11095 in the **Federal Register** of Friday, February 29, 2008, the following correction is made:

1. On page 11095, in the second column, in the **SUPPLEMENTARY INFORMATION** section, line twenty-two, the number "56" is corrected to read "37.6".

Dated: March 18, 2008.

Barbara Schneeman,

Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition.

[FR Doc. E8-6056 Filed 3-25-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-D-0178]

International Conference on Harmonisation; Draft Guidance on S2(R1) Genotoxicity Testing and Data Interpretation for Pharmaceuticals Intended for Human Use; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "S2(R1) Genotoxicity Testing and Data Interpretation for Pharmaceuticals Intended for Human Use." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance updates and combines information from two ICH guidances, "S2A Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals" and "S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals." The draft guidance is intended to help facilitate drug development programs, ensure patient safety, and reduce animal usage.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by May 12, 2008.

ADDRESSES: Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. Submit written requests for single copies of the draft

guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002; or the Office of Communication, Training and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. The draft guidance may also be obtained by mail by calling CBERT at 1-800-835-4709 or 301-827-1800. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: David Jacobson-Kram, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6488, Silver Spring, MD 20993-0002, 301-796-0175.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese

Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In February 2008, the ICH Steering Committee agreed that a draft guidance entitled "S2(R1) Genotoxicity Testing and Data Interpretation for Pharmaceuticals Intended for Human Use" should be made available for public comment. The draft guidance is the product of the Safety Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Safety Expert Working Group.

The draft guidance provides guidance on optimizing the standard genetic toxicology battery for the prediction of potential human risks, and on interpreting the results. The ultimate goal of this guidance is to improve risk characterization for carcinogenic effects induced by changes in the genetic material. The draft guidance is intended to help facilitate drug development programs, ensure patient safety, and reduce animal usage.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/ohrms/dockets/default.htm>, <http://www.fda.gov/cder/guidance/index.htm>, or <http://www.fda.gov/cber/publications.htm>.

Dated: March 21, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. 08-1076 Filed 3-21-08; 3:05 pm]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0145]

Preparation for International Conference on Harmonization Meetings in Portland, Oregon; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "Preparation for ICH Meetings in Portland, Oregon" to provide information and receive comments on the International Conference on Harmonization (ICH) as well as the upcoming meetings in Portland, Oregon. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Groups meetings in Portland, Oregon, June 2-5, 2008, at which discussion of the topics underway and the future of ICH will continue.

Date and Time: The meeting will be held on Friday April 4, 2008, from 12:30 pm to 5 p.m.

Location: The meeting will be held at 5600 Fishers Lane, 3rd floor, Conference Room G and H, Rockville, MD 20857. For security reasons, all attendees are asked to arrive no later than 12:25 p.m., as you will be escorted from the front

entrance of 5600 Fishers Lane to Conference Room G and H.

Contact Person: All participants must register with Tammie Bell, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, by e-mail: Tammie.bell@fda.hhs.gov or FAX: 301-480-0003.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material, and requests to make oral presentations, to the contact person by April 3, 2008.

If you need special accommodations due to a disability, please contact Tammie Bell at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH

sponsors and Health Canada, the European Free Trade Area, and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: <http://www.ich.org>.

The agenda for the public meeting will be made available via the internet at http://www.fda.gov/cder/meeting/ICH_20080404.htm.

One of the agenda items that will be discussed at the meeting will be the revised ICH S2 (R1) guidance. Elsewhere in this issue of the **Federal Register**, FDA is publishing a related document entitled "International Conference on Harmonisation; Draft Guidance on S2(R1) Genotoxicity Testing and Data Interpretation for Pharmaceuticals Intended for Human Use; Availability."

The revised ICH S2 Guidance proposes a new set of options for genetic toxicity testing. A primary impetus for these new testing options has been the occurrence of a high frequency of in vitro mammalian cell assay positive results and questions of the relevance of these positive results. The proposed new test battery consists of a bacterial mutation (Ames) assay followed by a choice of two options. The first option is similar to the present battery although the limit dose for the in vitro mammalian cell assays has been lowered 10-fold to 1 millimolar and the in vitro micronucleus test is introduced as an alternative for the in vitro mammalian test. The second option consists of two in vivo endpoints. The in vitro mammalian tests are not required for option 2. The first in vivo test is the micronucleus endpoint; however, the identity of the second in vivo test has been left open.

The rationale and scientific data to support the proposed changes in the revised ICH S2 Guidance will be discussed.

Specific Questions for the Public Meeting on Revised ICH S2 Guidance

1. The perceived problem with the current battery, as articulated in the new guidance, is that there are too many irrelevant (false) in vitro mammalian cell assay positive results. Are there sufficient scientific data (preferably published) that support the proposed changes in the revised guidance? Does the new battery address this issue without missing genotoxicants?

2. Most regulatory agencies use the same battery of genetic toxicology tests

as described in the ICH S2A and SB Guidances. What is the rationale for having a different genetic toxicity battery to support safety determinations for pharmaceuticals, versus for other chemical substances?

3. Is it reasonable, as part of ICH Guidance, to give sponsors an option of two test batteries? Are option 1 and option 2 test batteries equivalent? When would you use one and when would you use the other?

4. FDA has put in place new recommendations ("Guidance for Industry and Review Staff Recommended Approaches to Integration of Genetic Toxicology Study Results," published in January 2006) concerning the interpretation of genotoxicity data (weight-of-evidence approach). Have standards and recommendations for interpretation of current genotox batteries sufficiently addressed interpretation of results to obviate the need for changing the battery itself? Supporting data would be helpful.

5. Is the lowering of the maximum concentration in the in vitro mammalian assays by an order of magnitude scientifically justified?

6. Do the changes in the ICH Guidance adequately address accuracy (which requires both sensitivity and specificity)?

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. The public oral presentations schedule can be found on the ICH public meeting agenda. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by April 3, 2008, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

Transcripts: Please be advised that as soon as a transcript is available, it can be obtained in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HF1-35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6-30, Rockville, MD 20857.

Dated: March 20, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. 08-1077 Filed 3-21-08; 3:05 pm]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2008 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Grant to the American Society of Addiction Medicine (ASAM).

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately \$500,000 (total costs) per year for up to three years to the American Society of Addiction Medicine (ASAM). This is not a formal request for applications. Assistance will be provided only to the American Society of Addiction Medicine (ASAM) based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: TI-08-014.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 509 of the Public Health Service Act, as amended.

Justification: Only the American Society of Addiction Medicine (ASAM) is eligible to apply. The Substance Abuse and Mental Health Services Administration (SAMHSA) is seeking to award a single source grant to the American Society of Addiction Medicine (ASAM) to establish a national mentoring network offering support (clinical updates, evidence-based outcomes and training) free of charge to physicians and other medical professionals in the appropriate use of methadone for the treatment of chronic pain and opioid addiction. SAMHSA is responsible for certifying over 1,000 Opioid Treatment Programs (OTPs) that use methadone and buprenorphine in the treatment of opioid addiction. This initiative will help address the nation's rise in methadone-associated deaths that has been spurred by misuse/abuse and fatal drug interactions involving methadone.

According to the National Center for Health Statistics (NCHS), methadone poisoning deaths nationwide increased 390% from 786 deaths in 1999 to 3,849 deaths in 2004, and on going data indicate that the number of deaths in many states continued to increase in 2005 and 2006. Thus, prompt and direct implementation of this cooperative agreement is necessary to help ensure public health and safety.

To address this healthcare crisis in a timely manner, eligibility for the cooperative agreement is limited to ASAM to establish a national mentoring network and to carry out the dissemination of information and education as it relates to methadone use in the treatment of opioid addiction and chronic pain. ASAM presently provides a parallel service under a SAMHSA cooperative agreement to operate a Physician Clinical Support System (PCSS) to assist physicians with issues related to office-based treatment of opioid dependence with buprenorphine. As a result, ASAM is in the unique position to have the infrastructure and capacity in place to expeditiously meet the specific and unique needs outlined in this announcement. In addition, ASAM has demonstrated in the past (through the PCSS project) the capability to implement and achieve the goals of this program.

FOR FURTHER INFORMATION CONTACT: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8-1081, Rockville, MD 20857; telephone: (240) 276-2321; E-mail: shelly.hara@samhsa.hhs.gov.

Toian Vaughn,
SAMHSA Committee Management Officer.
[FR Doc. E8-6084 Filed 3-25-08; 8:45 am]
BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

60-Day Notice of Information Collection Under Review: Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document; OMB Control No. 1615-0079

Agency Information Collection Activities: Form I-102, Extension of a Currently Approved Information Collection; Comment Request.

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 27, 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, NW., 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 add the OMB Control Number 1615-0079 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I-102. Should USCIS decide to revise the Form I-102 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form I-102.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

- (1) Evaluate whether the 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 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-102. 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 and households. This form is used by the USCIS to determine eligibility for a waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,195 responses at 25 minutes (.416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,073 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: <http://www.regulations.gov/search/index.jsp>.

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 20, 2008.

Stephen Tarragon,
Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E8-6103 Filed 3-25-08; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2008-0170]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0004

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting a reinstatement, with change, of a previously approved collection for which approval has expired for the following collection of information: 1625-0004, United States Coast Guard Academy Application and Supplemental Forms. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 27, 2008.

ADDRESSES: To prevent duplicate submissions to the docket [USCG-2008-0170], please submit them by only one of the following means:

(1) Online: <http://www.regulations.gov>.

(2) Mail: Docket Management Facility (DMF) (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: DMF between the hours of 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.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>.

A copy of the complete ICR is available through this docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from Commandant (CG-611), U.S. Coast Guard Headquarters (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593-0001. The telephone number is 202-475-3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202-475-3523, or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's "Privacy Act Policy" below.

Submitting comments: If you submit a comment, please include the docket number [USCG-2008-0170], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information 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 DMF at the address under **ADDRESSES**; but please submit them 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 the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: Go to <http://www.regulations.gov> to view documents mentioned in this notice as being available in the docket. Enter the docket number [USCG-2008-0170] in the Search box, and click, "Go>>." You may also visit the DMF in room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, 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 in 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 Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or by visiting <http://DocketsInfo.dot.gov>.

Information Collection Request

Title: United States Coast Guard Academy Application and Supplemental Forms.

OMB Control Number: 1625-0004.

Summary: This collection contains the application and all supplemental forms required to be considered as an applicant to the U.S. Coast Guard Academy.

Need: Section 182 of 14 U.S.C. directs the appointments to cadetships at the Academy be made under regulations prescribed by the Secretary. As indicated in regulation 33 CFR 40.1, the information sought in this ICR is needed to select applicants for appointment as Cadet to attend the Academy.

Forms: CGA-14, CGA-14A, CGA-14B, CGA-14C, and CGA-14D.

Frequency: Applicants must apply only once per year.

Burden Estimate: The estimated burden has decreased from 8,300 hours to 8,100 hours a year.

Dated: March 19, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8-6146 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2008-0098]

Certificate of Alternative Compliance for Tug LAURA K. MORAN

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: In accordance with 33 U.S.C. 1605(c) the Coast Guard is providing notice that a Certificate of Alternative Compliance was issued for the Tug Laura K. Moran.

DATES: The letter in accordance with 33 U.S.C. 1605(c) was effective on February 22, 2008.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Dennis Spain, Prevention Branch, U.S. Coast Guard, telephone 757-398-6558.

SUPPLEMENTARY INFORMATION: The Tug Laura K. Moran will be used for ship assist, escorting, and fire fighting operations. Full compliance with 72 COLREGS will hinder the Tug's ability to maneuver within close proximity of the side of vessels during maneuvering operations. Due to the design of the Tug and the required height of the side running lights it would be difficult and impractical to build supporting structure that would put the lights within 3.2' from the side of Tug, as required by Annex I paragraph 3(b) of the 72 COLREGS. Compliance with the rule will cause the lights to be in a location which will be highly susceptible to damage from ships hulls or tows. Locating the side running lights 11'2" from the vessel side on top of the pilot house roof will provide a shelter location for the lights and allow maneuvering within close proximity to ships hulls.

A Certificate of Alternative Compliance, as allowed under Title 33, Code of Federal Regulation, Parts 81 and 89, has been issued for the towing vessel LAURA K. MORAN, O.N. 1208410. The Certificate of Alternative Compliance allows for the placement of the running lights to deviate from requirements set forth in Annex I paragraph 3(b) of 72 COLREGS.

Viewing of the Certificate: To view the Certificate of Alternative Compliance, go to <http://www.regulations.gov> at any time. Enter the docket number for this notice (USCG-2008-0098) in the Search box, and click "Go >>." 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.

Dated: March 4, 2008.

Fred M. Rosa, Jr.,

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

[FR Doc. E8-6122 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2008-0187]

National Maritime Security Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC) will meet in Portsmouth, VA to discuss various issues relating to national maritime security. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, April 16, 2008 from 9 a.m. to 4 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 1, 2008. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 1, 2008.

ADDRESSES: The Committee will meet at the Renaissance Portsmouth Hotel and Waterfront Conference Center, Portsmouth Ballroom #4, 425 Water Street, Portsmouth, VA. Send written material and requests to make oral presentations to Captain Mark O'Malley, Commandant (CG-544), Executive Director of NMSAC, U.S. Coast Guard Headquarters, Room 5302, 2100 2nd Street, SW., Washington, DC 20593-0001. This notice may be viewed in our online docket, USCG-2008-0187 at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Assistant to DFO of NMSAC, telephone 202-372-1108.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463).

Agenda of Meeting

The agenda for the April 16, 2008 Committee meeting is as follows:

(1) Presentation and Discussion of the Future Policy Issues Task Statement.

(2) Presentation and Discussion of the Maritime Transportation Security User Fee Study Task Statement.

(3) Report on the Status of the TWIC Program.

(4) Briefing and Discussion on the Port Security Grant Program.

(5) Briefing and Discussion on the National Strategy for Small Vessel Security.

(6) Briefing and Discussion on the National Concept of Operations for Maritime Domain Awareness (Tentative).

(7) Briefing and Discussion of the Long Range Identification and Tracking (LRIT) system.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the DFO no later than April 1, 2008. Written material for distribution at a meeting should reach the Coast Guard no later than April 1, 2008. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the DFO no later than April 1, 2008.

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 DFO as soon as possible.

Dated: March 13, 2008.

M.P. O'Malley,

Captain, U.S. Coast Guard, Chief, Office of Port and Facility Activities, Designated Federal Official, NMSAC.

[FR Doc. E8-6145 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2006-26416]

Voyage Data Recorder Study; Report to Congress

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of a report to Congress on the use of voyage data recorders on ferries. This report details the findings of the Coast Guard's study on the costs and benefits of requiring voyage data recorders on ferries of over 100 gross regulatory tons and carrying more than 399 passengers between two points not more than 300 miles apart.

FOR FURTHER INFORMATION CONTACT: If you have questions about the technical aspects of the report, contact Ms. Dolores Pyne-Mercier, Office of Design and Engineering Standards, U.S. Coast Guard, telephone 202-382-1381 or e-mail Dolores.J.Pyne-Mercier@uscg.mil. If you have questions on viewing or submitting material to the docket, contact Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402.

SUPPLEMENTARY INFORMATION: In section 420 of the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109-241), the Secretary of the Department in which the Coast Guard is operating is directed to study the use of voyage data recorders (VDR) on ferries over 100 gross regulatory tons and carrying more than 399 passengers between two points not more than 300 miles apart. The Act specified that the report would include an appraisal of the standards for VDRs, the methods of approving VDRs, and the procedures for annual VDR performance testing. The Act also specified that the study would include consultation with VDR manufacturers and ferry operators. The Coast Guard conducted the study between December 2006 and March 2007 and delivered a report to Congress on October 17, 2007. A copy of the report has been added into the docket. You may access the public docket electronically by performing a search for docket number "USCG-2006-26416" at <http://www.regulations.gov>.

Dated: March 4, 2008.

J.G. Lantz,

U.S. Coast Guard, Director of Commercial Regulations and Standards.

[FR Doc. E8-6142 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
[FEMA-1748-DR]
Missouri; Major Disaster and Related Determinations
AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA-1748-DR), dated March 12, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 12, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe winter storms and flooding during the period of February 10-14, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Missouri have been designated as adversely affected by this declared major disaster:

Bollinger, Butler, Cape Girardeau, Carter, Christian, Douglas, Greene, Madison, Mississippi, Ozark, Reynolds, Scott, Shannon, Stoddard, Texas, Wayne, Webster, and Wright Counties for Public Assistance. Direct Federal assistance is authorized.

All jurisdictions in the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,
Administrator, Federal Emergency Management Agency.

[FR Doc. E8-6140 Filed 3-25-08; 8:45 am]

BILLING CODE 9110-10-P
DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
[FEMA-1747-DR]
Illinois; Amendment No. 1 to Notice of a Major Disaster Declaration
AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-1747-DR), dated March 7, 2008, and related determinations.

DATES: *Effective Date:* March 14, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance

Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 14, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,
Administrator, Federal Emergency Management Agency.

[FR Doc. E8-6131 Filed 3-25-08; 8:45 am]

BILLING CODE 9110-10-P
DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
[FEMA-1740-DR]
Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration
AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA-1740-DR), dated January 30, 2008, and related determinations.

DATES: *Effective Date:* March 14, 2008.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 14, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA);

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8-6135 Filed 3-25-08; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1745-DR]

Tennessee; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA-1745-DR), dated February 7, 2008, and related determinations.

DATES: *Effective Date:* March 14, 2008.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 7, 2008.

Haywood County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster

Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8-6132 Filed 3-25-08; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3283-EM]

Illinois; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Illinois (FEMA-3283-EM), dated March 13, 2008, and related determinations.

DATES: *Effective Date:* March 13, 2008.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 13, 2008, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Illinois resulting from the record snow and near record snow during the period of February 5-6, 2008, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures, including snow removal, under the Public Assistance program to save lives and to protect property and public health and safety. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. This emergency assistance will be provided for any continuous 48-hour period during or proximate to the incident period. You may extend the period of

assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs in the designated areas. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Lawrence Sommers, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared emergency:

The counties of Boone, Carroll, Jo Daviess, Lake, McHenry, Stephenson, and Winnebago for emergency protective measures (Category B) under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8-6139 Filed 3-25-08; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3284-EM]

Texas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Texas (FEMA-3284-EM), dated March 14, 2008, and related determinations.

DATES: *Effective Date:* March 14, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2008, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Texas resulting from wildfires beginning on March 14, 2008, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Texas.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Kenneth G. Clark, of FEMA, is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Texas have been designated as adversely affected by this declared emergency:

The counties of Anderson, Andrews, Archer, Armstrong, Atascosa, Bailey, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Callahan, Carson, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin,

Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Culberson, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Duval, Eastland, Ector, Edwards, Ellis, Erath, Falls, Fannin, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Gonzales, Gray, Grayson, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Haskell, Hays, Hemphill, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, LaSalle, Lamar, Lamb, Lampasas, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Martin, Mason, Maverick, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Motley, Navarro, Nolan, Nueces, Oldham, Orange, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Real, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, San Saba, Schleicher, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Van Zandt, Walker, Waller, Ward, Washington, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Young, Zapata, and Zavala for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8-6130 Filed 3-25-08; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3285-EM]

Wisconsin; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Wisconsin (FEMA-3285-EM), dated March 19, 2008, and related determinations.

DATES: *Effective Date:* March 19, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 19, 2008, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Wisconsin resulting from the record snow and near record snow during the period of February 5-6, 2008, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures, including snow removal, under the Public Assistance program to save lives and to protect property and public health and safety. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. This emergency assistance will be provided for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the subgrantees' regular employees. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs in the designated areas.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Edward Smith, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared emergency:

Dane, Dodge, Green, Jefferson, Milwaukee, Rock, Walworth, and Washington Counties for emergency protective measures (Category B) under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8-6134 Filed 3-25-08; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA-2006-24191; Coast Guard-2006-24196]

Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Ports of New London, CT; Bay City, MI; and Point Comfort, TX

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Ports of New London, CT; Bay City, MI; and Point Comfort, TX.

DATES: TWIC enrollment begins in New London and Bay City on April 16, 2008; and Point Comfort on April 17, 2008.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at <http://www.regulations.gov>;

(2) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>; or

(3) Visiting TSA's Security Regulations Web page at <http://www.tsa.gov> and accessing the link for "Research Center" at the top of the page.

www.tsa.gov and accessing the link for "Research Center" at the top of the page.

FOR FURTHER INFORMATION CONTACT:

James Orgill, TSA-19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227-4545; e-mail: credentialing@dhs.gov.

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107-295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109-347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Ports of New London, CT and Bay City, MI on April 16, 2008; and Point Comfort, TX on April 17, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Long Island Sound, including those in the Port of New London; Captain of the Port Zone Detroit, including those in the Port of Bay City; and Captain of the Port Zone Corpus Christi, including those in the Port of Point Comfort must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at <http://www.tsa.gov/twic>.

Issued in Arlington, Virginia, on March 20, 2008.

Rex Lovelady,

Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E8-6076 Filed 3-25-08; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

60-Day Notice of Information Collection Under Review: Supplement A to Form I-539 (Filing Instructions for V Nonimmigrant Status Applicants); OMB Control No. 1615-0004

Agency Information Collection Activities: Supplement A to Form I-539, Extension of a Currently Approved Information Collection; Comment Request.

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 27, 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, NW., 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, add the OMB Control Number 1615-0004 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the 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 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Supplement A to Form I-539 (Filing Instructions for V Nonimmigrant Status Applicants).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Supplement A to Form I-539. 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 and households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 responses at 30 minutes (.5) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: <http://www.regulations.gov/search/index.jsp>.

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 20, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E8-6102 Filed 3-25-08; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-day notice of information collection under review; form I-901, fee remittance for certain F, J and M nonimmigrants; OMB Control No. 1653-0034.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), 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 27, 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), Lee Shirkey, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 514-3211.

Comments are encouraged and will be accepted for sixty days until May 27, 2008. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Fee Remittance for Certain F, J and M Nonimmigrants.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-901, Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or Households. Public Law 104-208, Subtitle D, Section 641 directs the Attorney General, in consultation with the Secretary of State and the Secretary of Education, to develop and conduct a program to collect information on nonimmigrant foreign students and exchange visitors from approved institutions of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended or in a program of study at any other DHS-approved academic or language-training institution, to include approved private elementary and secondary schools and public secondary schools, and from approved exchange visitor program sponsors designated by the Department of State (DOS). It also authorized a fee, not to exceed \$100, to be collected from these students and exchange visitors to support this information collection program. DHS has implemented the Student and Exchange Visitor Information System (SEVIS) to carry out this statutory requirement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600,000 responses at 19 minutes (.32) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 192,000 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Lee Shirkey, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 616-2266.

Dated: March 21, 2008.

Lee Shirkey,

Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E8-6169 Filed 3-25-08; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information Collection Under review. Application for stay of deportation or removal, form I-246, OMB No. 1653-0021.

The Department of Homeland Security, Bureau of Immigration and Customs Enforcement has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 27, 2008.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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:* New information collection.

(2) *Title of the Form/Collection:* Application for Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-246. Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals. The information collected on the Form I-246 is necessary for U.S. Immigration and Customs Enforcement (ICE) to make a determination that the eligibility requirements for a request for a stay of deportation or removal are met by the applicant. Upon approval of the application the alien's removal from the United States is stayed at the discretion of the Field Office Director or other designated Department of Homeland Security official, pursuant to section 241.6 of Title 8 Code of Federal Regulations (CFR).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,500 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,125 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Lee Shirkey 202-353-2266, Branch Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, 425 I Street, NW., Room 1122, Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Lee Shirkey.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Lee Shirkey, Chief, Records Management Branch; U.S. Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 353-2266.

Dated: March 21, 2008.

Lee Shirkey,

Records Management Branch Chief, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E8-6170 Filed 3-25-08; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-day notice of information collection under review; form G-146, nonimmigrant checkout letter; OMB Control No. 1653-0020.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), 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 27, 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), Lee Shirkey, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 514-3211.

Comments are encouraged and will be accepted for sixty days until May 27, 2008. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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:* Extension of currently approved information collection.
 (2) *Title of the Form/Collection:* Order to Show Cause.
 (3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G-146, Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households. When an alien (other than one who is required to depart under safeguards) is granted the privilege of voluntary departure without the issuance of an Order to Show Cause, a control card is prepared. If, after a certain period of time, a verification of departure is not received, actions are taken to locate the alien or ascertain his or her whereabouts. Form G-146 is used to inquire of persons in the United States or abroad regarding the whereabouts of the alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.16) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,220 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Lee Shirkey, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 616-2266.

Dated: March 21, 2008.
Lee Shirkey,
Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.
 [FR Doc. E8-6171 Filed 3-25-08; 8:45 am]
BILLING CODE 9111-28-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5187-N-15]

Request for Prepayment of Direct Loans on Section 202 and 202/8 Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Request from owner to prepay a multifamily housing project mortgage financed under Section 202 with inclusion of FHA insurance guidelines.

DATES: *Comments Due Date:* April 25, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502-0554) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at

Lillian_L_Deitzer@HUD.gov or telephone (202) 402-8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Request for Prepayment of Direct Loans on Section 202 and 202/8 Projects.

Omb Approval Number: 2502-0554.
Form Numbers: HUD-9808.

Description Of The Need For The Information And Its Proposed Use: Request from owner to prepay a multifamily housing project mortgage financed under Section 202 with inclusion of FHA insurance guidelines.

Frequency Of Submission: On occasion, Other Reporting is voluntary based on the owner's decision to prepay the mortgage.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	280	1		2		560

Total Estimated Burden Hours: 560.
Status: Extension of a currently approved collection.
Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Date: March 20, 2008.
Lillian L. Deitzer,
Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.
 [FR Doc. E8-6173 Filed 3-25-08; 8:45 am]
BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR-5100-FA-09]

Announcement of Funding Awards for the Housing Counseling Program for Fiscal Year 2007

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545), this announcement notifies the public of funding decisions made by the Department in a Super Notice of Funding Availability (NOFA) competition for funding of HUD-approved counseling agencies to provide counseling services. Appendix A contains the names and addresses of the agencies competitively selected for funding and the award amounts. Intermediaries are listed first and subsequent awards are grouped by their respective HUD Homeownership Center. Additionally, this announcement lists the noncompetitive housing counseling awards made by the Department.

FOR FURTHER INFORMATION CONTACT: Ruth Román, Director, Program Support Division, Room 9274, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-0317. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service on 800-877-8339. (This is a toll free number.)

SUPPLEMENTARY INFORMATION: The Housing Counseling Program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). HUD enters into agreement with qualified public or

private nonprofit organizations to provide housing counseling services to low- and moderate-income individuals and families nationwide. The services include providing information and assistance to the homeless, renters, first-time homebuyers, homeowners, and senior citizens in areas such as pre-purchase counseling, financial management, property maintenance and other forms of housing assistance to help individuals and families improve their housing conditions and meet the responsibilities of tenancy and homeownership.

HUD funding of approved housing counseling agencies is not guaranteed, and when funds are awarded, a HUD grant does not cover all expenses incurred by an agency to deliver housing counseling services. Counseling agencies must actively seek additional funds from other sources such as city, county, state and federal agencies and from private entities to ensure that they have sufficient operating funds. The availability of Housing Counseling grants depends upon appropriations and the outcome of the award competition.

The 2007 grantees announced in Appendix A of this Notice were selected for funding through a competition announced in a NOFA, published in the **Federal Register** on March 13, 2007 (Vol. 72, No. 48, page 11524), and corresponding Supplementary Information and Technical Corrections Notice, published in the **Federal Register** on May 11, 2007 (Vol. 72, No. 91, page 27031), for the Housing

Counseling Program. Applications were scored and selected for funding on the basis of selection criteria contained in the NOFA. HUD awarded \$41,062,461 for comprehensive housing counseling and \$3,000,000 in supplemental funding for reverse mortgage counseling.

Specifically, \$24,054,720 was awarded to nineteen intermediaries, \$2,276,480 was awarded to seventeen State Housing Finance Agencies (SHFAs) and \$14,731,126 was awarded to 352 Local Housing Counseling Agencies (LHCAs).

Additionally, \$399,974 was awarded to the American Association of Retired Persons (AARP) Foundation to provide housing counseling training to counselors providing Home Equity Conversion Mortgage (HECM) counseling and \$2,600,026 was awarded to Neighbor Works America for comprehensive counseling training counselors participating in HUD's housing counseling program.

Additionally, HUD awarded a noncompetitive grant in the amount of \$16,475 to Jefferson Community Action Program (Louisiana).

The Catalog of Federal Domestic Assistance (CFDA) number for the Housing Counseling Program is 14.169. The Housing Counseling Training Program CFDA number is 14.316.

Dated: March 5, 2008.

Brian D. Montgomery,
Assistant Secretary for Housing—Federal Housing Commissioner.

INTERMEDIARY ORGANIZATIONS (19)

Headquarters SF-HUD

ACORN HOUSING CORPORATION, 846 N. Broad St., 2nd floor, Philadelphia, PA 19130-2234 Grant Type: Comprehensive. Amount Awarded: \$1,628,829.25.	MON VALLEY INITIATIVE, 303-305 E. 8th Avenue, Homestead, PA 15120-1517 Grant Type: Comprehensive. Amount Awarded: \$1,100,000.00.
CATHOLIC CHARITIES USA, 1731 King Street, Alexandria, VA 22314-2720 Grant Type: Comprehensive. Amount Awarded: \$1,016,473.86.	MONEY MANAGEMENT INTERNATIONAL INC., 9009 West Loop South, Suite 700, Houston, TX 77096-1719 Grant Type: Comprehensive. Amount Awarded: \$1,118,533.09.
CITIZENS' HOUSING AND PLANNING ASSOCIATION, INC., 18 Tremont Street, Suite 401, Boston, MA 02108-0000 Grant Type: Comprehensive. Amount Awarded: \$710,296.16.	NATIONAL ASSOCIATION OF REAL ESTATE BROKERS-INVESTMENT DIVISION, INC., 3560 Grand Avenue, Oakland, CA 94610 Grant Type: Comprehensive. Amount Awarded: \$506,177.70.
HOMEFREE—U S A, 3401 A East West Highway, Hyattsville, DC 20782 Grant Type: Comprehensive. Amount Awarded: \$1,016,473.86.	NATIONAL COUNCIL OF LA RAZA, Raul Yzaguirre Building, 1126 16th Street, NW., Suite 600, Washington, DC 20036 Grant Type: Comprehensive. Amount Awarded: \$1,322,651.55.
HOMEOWNERSHIP PRESERVATION FOUNDATION, 8400 Normandale Lake Blvd., Suite 250, Mail Code 01-05-50, Minneapolis, MN 55437 Grant Type: Comprehensive. Amount Awarded: \$1,016,473.86.	NATIONAL CREDIT UNION FOUNDATION, 601 Pennsylvania Avenue, NW., South Building, Suite 600, Washington, DC 20004-2601 Grant Type: Comprehensive. Amount Awarded: \$710,296.16.

INTERMEDIARY ORGANIZATIONS (19)—Continued

HOUSING PARTNERSHIP NETWORK, 160 State Street, 5th Fl., Boston, MA 02109 Grant Type: Comprehensive. Amount Awarded: \$2,139,125.41.	NATIONAL FOUNDATION FOR CREDIT COUNSELING, INC., 801 Roeder Road, Suite 900, Silver Spring, MD 20910-3372 Grant Type: Comprehensive. Amount Awarded: \$1,730,888.48.
MISSION OF PEACE, 877 East Fifth Ave., Flint, MI 48503 Grant Type: Comprehensive. Amount Awarded: \$710,296.16.	NATIONAL URBAN LEAGUE, 120 Wall Street, New York, NY 10005 Grant Type: Comprehensive. Amount Awarded: \$914,414.63.
MISSISSIPPI HOMEBUYER EDUCATION CENTER—INITIATIVE, 350 West Woodrow Wilson, Suite 3480, Jackson, MS 39213 Grant Type: Comprehensive. Amount Awarded: \$302,059.23.	NEIGHBORHOOD REINVESTMENT CORPORATION/dba NEIGHBORWORKS AMERICA, 1325 G St. NW., Suite 800, Washington, DC 20005-3104 Grant Type: Comprehensive. Amount Awarded: \$1,424,710.79.
STRUCTURED EMPLOYMENT ECONOMIC DEVELOPMENT COMPANY, 915 Broadway, 17th Floor, New York, NY 10010 Grant Type: Comprehensive. Amount Awarded: \$1,832,947.72.	WEST TENNESSEE LEGAL SERVICES, INCORPORATED, 210 West Main Street, P.O. Box 2066, Jackson, TN 38302-2066 Grant Type: Comprehensive. Amount Awarded: \$1,118,533.09.
HQ-TRAINING INTERMEDIARIES (2), AARP Foundation, 601 E Street, NW., Washington, DC 20049 Grant Type: HECM. Amount Awarded: \$399,974.	NEIGHBORHOOD REINVESTMENT CORPORATION/dba NEIGHBORWORKS AMERICA, 1325 G Street, NW., Suite 800, Washington, DC 20005-3104 Grant Type: Training. Amount Awarded: \$2,600,026.

LOCAL HOUSING COUNSELING AGENCIES (352)

Atlanta (LHCA—COMP)

ACCESS LIVING OF METROPOLITAN CHICAGO, 614 Roosevelt Road, Chicago, IL 60607 Grant Type: Comprehensive. Amount Awarded: \$45,000.00.	AFFORDABLE HOUSING ENTERPRISES, INC., 2000 Princeton Ave., College Park, GA 30349 Grant Type: Comprehensive. Amount Awarded: \$30,000.00.
AFFORDABLE HOUSING COALITION OF ASHEVILLE AND BUNCOMBE COUNTIES, INC., 34 Wall Street, Suite 607, Asheville, NC 28801 Grant Type: Comprehensive. Amount Awarded: \$33,000.00.	ALABAMA COUNCIL ON HUMAN RELATIONS, INC., 319 W. Glenn Ave., P.O. Box 409, Auburn, AL 36831-0409 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.
AFFORDABLE HOUSING CORPORATION, 812 South Washington Street, Marion, IN 46953 Grant Type: Comprehensive. Amount Awarded: \$53,000.00.	CDBG OPERATIONS CORPORATION, 510 North 25th Street, East St. Louis, IL 62205 Grant Type: Comprehensive. Amount Awarded: \$43,400.00.
APPALACHIAN HOUSING AND REDEVELOPMENT CORPORATION, 800 Avenue B, P.O. Box 1428, Rome, GA 30162-1428 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.	CEIBA HOUSING AND ECONOMIC DEVELOPMENT CORPORATION, Ave. Lauro Pinero 252, P.O. Box 203, Ceiba, PR 00735-0203 Grant Type: Comprehensive. Amount Awarded: \$48,923.27.
B&D TRAINING SERVICES, 2952 Priscilla, Indianapolis, IN 46218 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	CENTER FOR PAN ASIAN COMMUNITY SERVICES, INC., 3760 Park Avenue, Doraville, GA 30340 Grant Type: Comprehensive. Amount Awarded: \$32,000.00.
CAMPBELLSVILLE HOUSING AND REDEVELOPMENT AUTHORITY, 400 Ingram Ave., P.O. Box 597, Campbellsville, KY 42718-1627 Grant Type: Comprehensive. Amount Awarded: \$23,865.00.	CENTRAL FLORIDA COMMUNITY DEVELOPMENT CORPORATION, 847 Orange Avenue, P.O. Box 15065, Daytona Beach, FL 32114 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.
CAROLINA REGIONAL LEGAL SERVICES CORPORATION, 279 W. Evans Street, P.O. Box 479, Florence, SC 29503-0479 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	CHOANOKE AREA DEVELOPMENT ASSOCIATION, 120 Sessoms Drive, Rich Square, NC 27869 Grant Type: Comprehensive. Amount Awarded: \$67,000.31.
CCCS OF FORSYTH COUNTY, INC.—MAIN OFFICE, 8064 North Point Boulevard, Suite 204, Winston Salem, NC 27106 Grant Type: Comprehensive. Amount Awarded: \$103,154.39.	CITIZENS FOR AFFORDABLE HOUSING, 295 Plus Park Blvd., Suite 105, Terrace I, Nashville, TN 37217 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

CCCS OF WEST FL—MAIN OFFICE, 14 Palafox Place, P.O. Box 950, Pensacola, FL 32502 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.	CITY OF ALBANY, GEORGIA, 230 South Jackson St., Ste. 315, Albany, GA 31701 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.
CITY OF BLOOMINGTON, 401 N. Morton St., P.O. Box 100, Bloomington 47402, Bloomington, IN 47404-3729 Grant Type: Comprehensive. Amount Awarded: \$36,503.00.	COMMUNITY AND ECONOMIC DEVELOPMENT ASSOCIATION OF COOK COUNTY INC., 208 S. LaSalle St., Ste. 1900, Chicago, IL 60604-1104 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.
COBB HOUSING, INCORPORATED, 268 Lawrence St., Suite 100-A, Marietta, GA 30060 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	COMMUNITY INVESTMENT CORPORATION OF DECATUR, INC., 2121 S. Imboden Court, Decatur, IL 62521 Grant Type: Comprehensive. Amount Awarded: \$35,000.00.
COMMUNITY ACTION AGENCY OF NORTHWEST ALABAMA, INC., 745 Thompson St., Florence, AL 35630-3867 Grant Type: Comprehensive. Amount Awarded: \$35,000.00.	COMMUNITY SERVICE PROGRAMS OF WEST ALABAMA, INC., 601 17th St., Tuscaloosa, AL 35401-4807 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.
COMMUNITY ACTION PARTNERSHIP OF NORTH ALABAMA, INC., 1909 Central Parkway, SW., Decatur, AL 35601 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	CONSUMER CREDIT COUNSELING SERVICE OF WNC, INC., 50 S. French Broad Ave., Ste. 227, Asheville, NC 28801-3217 Grant Type: Comprehensive. Amount Awarded: \$70,000.00.
COOPERATIVE RESOURCE CENTER, INC., 191 Edgewood Avenue, Atlanta, GA 30303 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	CORPORACION MILAGROS DEL AMOR, P.O. Box 6445, 78 Gautier Benitez Street, Caguas, PR 00726-6445 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
CREDIT CARD MANAGEMENT SERVICES, INC., 4611 Okeechobee Boulevard, Suite 114, West Palm Beach, FL 33417 Grant Type: Comprehensive. Amount Awarded: \$41,692.45.	CUMBERLAND COMMUNITY ACTION PROGRAM, INC., 316 Green Street, P.O. Box 2009, Zip 29302 (for P.O. box only), Fayetteville, NC 28302 Grant Type: Comprehensive. Amount Awarded: \$45,000.00.
DU PAGE HOMEOWNERSHIP CENTER, INC., 1333 N. Main St., Wheaton, IL 60187-3579 Grant Type: Comprehensive. Amount Awarded: \$65,000.00.	DURHAM REGIONAL FINANCIAL CENTER DBA DURHAM REGIONAL COMMUNITY DEVELOPMENT GROUP, 315 East Chapel Hill Street, Suite 304, Durham, NC 27701 Grant Type: Comprehensive. Amount Awarded: \$35,000.00.
EAST ATHENS DEVELOPMENT CORPORATION, 410 McKinley Drive, Suite 101, Athens, GA 30601 Grant Type: Comprehensive. Amount Awarded: \$41,692.45.	GOODWILL INDUSTRIES MANASOTA, INC., 1781 Dr. Martin Luther King Jr. Way, Sarasota, FL 34234 Grant Type: Comprehensive. Amount Awarded: \$41,692.45.
ECONOMIC OPPORTUNITY FOR SAVANNAH CHATHAM COUNTY AREA, INC., 618 W. Anderson St., P.O. Box 1353, Savannah, GA 31415 Grant Type: Comprehensive. Amount Awarded: \$70,615.72.	GREATER SOUTHWEST DEVELOPMENT CORPORATION, 6155 S. Pulaski, 2nd Floor, Chicago, IL 60629 Grant Type: Comprehensive. Amount Awarded: \$55,000.00.
ELIZABETH CITY STATE UNIVERSITY, 1704 Weeksville Rd., Elizabeth City, NC 27909 Grant Type: Comprehensive. Amount Awarded: \$64,513.00.	GREENSBORO HOUSING COALITION, 122 N. Elm Street, Suite M-6, Greensboro, NC 27401 Grant Type: Comprehensive. Amount Awarded: \$36,297.00.
ELKHART HOUSING PARTNERSHIP, INC., 215 E. Indiana Avenue, P.O. Box 1772, Elkhart, IN 46516 Grant Type: Comprehensive. Amount Awarded: \$28,000.00.	GREENVILLE COUNTY HUMAN RELATIONS COMMISSION, 301 University Ridge, Suite 1600, Greenville, SC 29601-3660 Grant Type: Comprehensive. Amount Awarded: \$81,461.94.
FAMILY COUNSELING CENTER OF BREVARD, INC., 220 Coral Sands Dr., Rockledge, FL 32955-2702 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.	HANCOCK COMMUNITY DEVELOPMENT CORPORATION, 300 Henderson Ext., Athens, GA 30606 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.
FAMILY SERVICES CENTER, INC., 600 St. Clair Avenue, Building 3, Huntsville, AL 35801 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.	HAVEN ECONOMIC DEVELOPMENT INC., 12240 SW. 53rd Street, Bay 504, Cooper City, FL 33330 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

FAMILY SERVICES, INC., 4925 Lacross St., Ste. 215, North Charleston, SC 29406 Grant Type: Comprehensive. Amount Awarded: \$30,000.00.	HCP OF ILLINOIS, INC., 28 E. Jackson Blvd., #1109, Chicago, IL 60604 Grant Type: Comprehensive. Amount Awarded: \$48,923.27.
GAP COMMUNITY DEVELOPMENT RESOURCES, INC., 129 West Fowlkes Street, Suite 137, Franklin, TN 37064 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	HIGHLAND FAMILY RESOURCE CENTER, INC., 1305 N. Weldon Street, P.O. Box 806, Gastonia, NC 28053 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.
HOME DEVELOPMENT RESOURCES, INC. (FORMERLY GAINESVILLE-HALL COUNTY), 2380 Murphy Blvd., P.O. Box 642, Gainesville, GA 30503 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.	HOUSING AUTHORITY OF THE CITY OF HIGH POINT, 500 E. Russell Avenue, P.O. Box 1779, High Point, NC 27260-1779 Grant Type: Comprehensive. Amount Awarded: \$85,077.35.
HOMES IN PARTNERSHIP, INCORPORATED, 235 E. 5th St., P.O. Box 761, Apopka, FL 32703-5315 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	HOUSING AUTHORITY OF THE COUNTY LAKE, 33928 North Route 45, Grayslake, IL 60030 Grant Type: Comprehensive. Amount Awarded: \$27,000.00.
HOOSIER UPLANDS ECONOMIC DEVELOPMENT CORPORATION, 521 W. Main St., P.O. Box 9, Mitchell, IN 47446-1410 Grant Type: Comprehensive. Amount Awarded: \$25,000.00	HOUSING AUTHORITY, CITY OF ELKHART, 1396 Benham Ave., Elkhart, IN 46516-3341 Grant Type: Comprehensive. Amount Awarded: \$26,236.00.
HOPE OF EVANSVILLE, INC., 608 Cherry St., Evansville, IN 47713-1808 Grant Type: Comprehensive. Amount Awarded: \$34,000.00.	HOUSING EDUCATION AND ECONOMIC DEVELOPMENT, INC., 3405 Medgar Evers Blvd., P.O. Box 11853, Jackson, MS 39213-6360 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.
HOUSING ASSISTANCE AND DEVELOPMENT SERVICES, INC., 1135 Adams Street, P.O. Box 9637, Bowling Green, KY 42102-9637 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	HOUSING OPPORTUNITIES, INC., 2801 Evans Avenue, Valparaiso, IN 46383 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
HOUSING AUTHORITY OF THE CITY OF FORT WAYNE, INDIANA, 2025 S. Anthony Blvd., P.O. Box 13489, Fort Wayne, IN 46869 Grant Type: Comprehensive. Amount Awarded: \$46,500.00.	HOUSING OPPORTUNITY DEVELOPMENT, 1000 Skokie Boulevard, Suite 500, Wilmette, IL 60091 Grant Type: Comprehensive. Amount Awarded: \$35,000.00.
HOUSING AUTHORITY OF THE CITY OF HAMMOND, 1402 173rd Street, Hammond, IN 46324-2831 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.	HOUSING PARTNERSHIP, INC., 2001 W. Blue Heron Blvd., Riviera Beach, FL 33404 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.
JACKSONVILLE AREA LEGAL AID, INC., 126 W. Adams Street, Jacksonville, FL 32202-3849 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.	MACON MIDDLE GEORGIA HOUSING COUNSELING CENTER, 682 Cherry Street, Suite 103, Macon, GA 31201 Grant Type: Comprehensive. Amount Awarded: \$48,923.27.
JCVISION AND ASSOCIATES, INC., 135 G East Martin Luther King Dr., P.O. Box 1972, Hinesville, GA 31313 Grant Type: Comprehensive. Amount Awarded: \$67,000.31.	MANATEE OPPORTUNITY COUNCIL, INCORPORATED, 302 Manatee Avenue E., Suite 150, Bradenton, FL 34208 Grant Type: Comprehensive. Amount Awarded: \$42,000.00.
JEFFERSON COUNTY COMMITTEE FOR ECONOMIC OPPORTUNITY, 300 Eighth Avenue, West Birmingham, AL 35204-3039 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	MIAMI-DADE AFFORDABLE HOUSING FOUNDATION, INC., 19 West Flagler Street, Suite 311, Miami, FL 33130 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
JOHNSTON-LEE-HARNETT COMMUNITY ACTION, INC., 1102 Massey Street, P.O. Drawer 711, Smithfield, NC 27577-0711 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	MID-FLORIDA HOUSING PARTNERSHIP, INC., 1834 Mason Avenue, Daytona Beach, FL 32117 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.
LATIN AMERICAN ASSOCIATION, 2750 Buford Highway, Atlanta, GA 30324 Grant Type: Comprehensive. Amount Awarded: \$45,000.00.	MIDDLE GEORGIA COMMUNITY ACTION AGENCY, INC., 121 Prince Street, P.O. Box 2286, Warner Robins, GA 31099 Grant Type: Comprehensive. Amount Awarded: \$56,154.08.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

MONROE-UNION COUNTY COMMUNITY DEVELOPMENT CORPORATION, 349 East Franklin Street, P.O. Box 887, Monroe, NC 28112 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.	MOBILE HOUSING BOARD, 1555-B Eagle Drive, Mobile, AL 36605 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.
LATIN UNITED COMMUNITY HOUSING ASSOCIATION, 3541 West North Avenue, Chicago, IL 60647 Grant Type: Comprehensive. Amount Awarded: \$67,000.31.	MOMENTIVE CONSUMER CREDIT COUNSELING SERVICE, 615 N. Alabama Street, Suite 134, Indianapolis, IN 46204-1477 Grant Type: Comprehensive. Amount Awarded: \$52,538.68.
LINCOLN HILLS DEVELOPMENT CORPORATION, 302 Main St., P.O. Box 336, Tell City, IN 47586-0336 Grant Type: Comprehensive. Amount Awarded: \$23,550.00.	OPA-LOCKA COMMUNITY DEVELOPMENT CORPORATION, 490 Opa-Locka Boulevard, Suite 20, Opa-Locka, FL 33054 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
MONROE-UNION COUNTY COMMUNITY DEVELOPMENT CORPORATION, 349 East Franklin Street, P.O. Box 887, Monroe, NC 28112 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.	
MUNCIE HOME OWNERSHIP AND DEVELOPMENT CENTER, 407 S. Walnut St., Muncie, IN 47305 Grant Type: Comprehensive. Amount Awarded: \$41,692.45.	ORGANIZED COMMUNITY ACTION PROGRAMS, INC., 507 North Three Notch Street, P.O. Box 908, Troy, AL 36081-0908 Grant Type: Comprehensive. Amount Awarded: \$30,000.00.
NEIGHBORWORKS COLUMBUS (FORMERLY KNOWN AS COLUMBUS HOUSING INITIATIVE, INC.), 18 11th Street, Columbus, GA 31901 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	OUTER BANKS COMMUNITY DEVELOPMENT CORPORATION, 115 Mustian Street, P.O. Box 2467, Kill Devil Hills, NC 27948 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.
NORTHEASTERN COMMUNITY DEVELOPMENT CORPORATION, 154 Highway 158 East, P.O. Box 367, Camden, NC 27921-0367 Grant Type: Comprehensive. Amount Awarded: \$95,923.58.	PROSPERITY UNLIMITED, INC., 1660 Garnet Street, Kannapolis, NC 28083 Grant Type: Comprehensive. Amount Awarded: \$85,077.35.
NORTHWESTERN REGIONAL HOUSING AUTHORITY, 869 Highway 105 Ext., Ste. 10, P.O. Box 2510, Boone, NC 28607-2510 Grant Type: Comprehensive. Amount Awarded: \$49,288.00.	PURCHASE AREA HOUSING CORPORATION, 1002 Medical Dr., P.O. Box 588, Mayfield, KY 42066-0588 Grant Type: Comprehensive. Amount Awarded: \$30,000.00.
OCALA HOUSING AUTHORITY, 1629 Northwest 4th Street, Ocala, FL 34475 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.	REDEMPTION MINISTRIES, INC., 109 Industrial Boulevard, P.O. Box 1893, Thomasville, GA 31799 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
OLIVE HILL COMMUNITY ECONOMIC DEVELOPMENT CORPORATION, 301 East Meeting St., Second Floor, P.O. Box 4008, Morganton, NC 28680-4008 Grant Type: Comprehensive. Amount Awarded: \$74,231.13.	RIVER CITY COMMUNITY DEVELOPMENT CORPORATION, 501 East Main St., Elizabeth City, NC 27909 Grant Type: Comprehensive. Amount Awarded: \$70,000.00.
ROCKY MOUNT/EDGECOMBE CDC, 148 S. Washington Street, Suite 103, Harambe Square, Rocky Mount, NC 27802 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.	TALLAHASSEE LENDERS CONSORTIUM, INC., 833 East Park Avenue, Tallahassee, FL 32301 Grant Type: Comprehensive. Amount Awarded: \$52,000.00.
ROGERS PARK COMMUNITY DEVELOPMENT CORPORATION, 1530 West Morse Avenue, Chicago, IL 60626 Grant Type: Comprehensive. Amount Awarded: \$48,923.27.	TALLAHASSEE URBAN LEAGUE, INC., 923 Old Bainbridge Road, Tallahassee, FL 32303-6042 Grant Type: Comprehensive. Amount Awarded: \$52,538.68.
SACRED HEART SOUTHERN MISSIONS HOUSING CORPORATION, 9260 McLemore Drive, P.O. Box 365, Walls, MS 38680-0365 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	TAMPA HOUSING AUTHORITY, 1803 North Howard Avenue, Tampa, FL 33607 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.
SANDHILLS COMMUNITY ACTION PROGRAM, INC., 103 Saunders St., P.O. Box 937, Carthage, NC 28327-0937 Grant Type: Comprehensive. Amount Awarded: \$35,135.00.	THE CENTER FOR AFFORDABLE HOUSING, INC., 2524 S. Park Drive, Sanford, FL 32773 Grant Type: Comprehensive. Amount Awarded: \$41,692.45.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

SOUTH SUBURBAN HOUSING CENTER, 18220 Harwood Avenue, Suite 1, Homewood, IL 60430 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.	THE HOUSING CORPORATION, 1620 Tamiami Trail, Suite 103, The City Center, Port Charlotte, FL 33948 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.
SOUTHERN INDIANA HOMEOWNERSHIP INC., 4367 N. Purdue Rd., Vincennes, IN 47591 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	TOTALLY FREE, INC., 2517 Norwich Street, Brunswick, GA 31520 Grant Type: Comprehensive. Amount Awarded: \$45,000.00.
ST. PETERSBURG NEIGHBORHOOD HOUSING SERVICES, INC., 1600 Martin L. King Street S., St. Petersburg, FL 33701 Grant Type: Comprehensive. Amount Awarded: \$48,923.27.	VOLLINTINE EVERGREEN COMMUNITY ASSOCIATION CDC, 1680 Jackson Ave., Memphis, TN 38107-5044 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.
STATESVILLE HOUSING AUTHORITY, 110 West Allison Street, Statesville, NC 28677 Grant Type: Comprehensive. Amount Awarded: \$49,058.00.	WESTERN PIEDMONT COUNCIL OF GOVERNMENTS, 736 4th Street, South-West, P.O. Box 9026, Hickory, NC 28602 Grant Type: Comprehensive. Amount Awarded: \$36,000.00.
TSP-HOPE, INC., 1507 East Cook Street, P.O. Box 6091, Springfield, IL 62708-6091 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	WILL COUNTY CENTER FOR COMMUNITY CONCERNS, 304 N. Scott Street, Joliet, IL 60432 Grant Type: Comprehensive. Amount Awarded: \$35,000.00.
TRIDENT UNITED WAY, 6296 Rivers Avenue, P.O. Box 63305, North Charleston, SC 29419 Grant Type: Comprehensive. Amount Awarded: \$56,154.08.	WILSON COMMUNITY IMPROVEMENT ASSOCIATION, INC., 504 E. Green St., Wilson, NC 27893 Grant Type: Comprehensive. Amount Awarded: \$44,550.00.
TWIN RIVERS OPPORTUNITIES, INC., 318 Craven St., P.O. Box 1482, New Bern, NC 28563 Grant Type: Comprehensive. Amount Awarded: \$46,000.00.	WOODBINE COMMUNITY ORGANIZATION, 222 Oriel Ave., Nashville, TN 37210 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.
UNIVERSITY OF GEORGIA FAMILY AND CONSUMER SCIENCES COOPERATIVE EXTENSION SERVICE (MAIN OFFICE), 555 Monroe Street, Unit 50, Box 13, Clarkesville, GA 30523 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.	
Denver (LHCA-COMP)	
ADAMS COUNTY HOUSING AUTHORITY, 7190 Colorado Blvd., 6th Fl., Commerce City, CO 80022-1812 Grant Type: Comprehensive. Amount Awarded: \$74,231.13.	CARVER COUNTY CDA, 705 Walnut Street, Chaska, MN 55318 Grant Type: Comprehensive. Amount Awarded: \$56,154.08.
ANOKA COUNTY COMMUNITY ACTION PROGRAM, INC., 1201 89th Ave., NE, Ste. 345, Blaine, MN 55434-3373 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.	CATHOLIC CHARITIES DIOCESE OF ST. CLOUD, 157 Roosevelt Rd #200, Saint Cloud, MN 56301 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.
ARROWHEAD ECONOMIC OPPORTUNITY AGENCY, INC., 702 Third Avenue South, Virginia, MN 55792-2797 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.	CENTER FOR SIOUXLAND, 715 Douglas St., Sioux City, IA 51101-1208 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.
AUSTIN TENANTS' COUNCIL, 1640-B E. Second St., Suite 150, Austin, TX 78702-4455 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.	CITY OF FORT WORTH HOUSING DEPARTMENT, 1000 Throckmorton St., Fort Worth, TX 76102 Grant Type: Comprehensive. Amount Awarded: \$59,769.49.
AVENUE COMMUNITY DEVELOPMENT CORPORATION, 2505 Washington Ave., Suite 400, Houston, TX 77007 Grant Type: Comprehensive. Amount Awarded: \$43,000.00.	CITY OF SAN ANTONIO/COMMUNITY INITIATIVES DEPARTMENT, 1325 N. Flores, Ste. 114, P.O. Box 839966, San Antonio, TX 78205 Grant Type: Comprehensive. Amount Awarded: \$70,615.72.
BOULDER COUNTY HOUSING AUTHORITY, 3482 North Broadway, Sundquist Bldg., Boulder, CO 80304 Grant Type: Comprehensive. Amount Awarded: \$52,538.68.	COLORADO HOUSING ASSISTANCE CORPORATION, 670 Santa Fe Drive, Denver, CO 80204 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

BROTHERS REDEVELOPMENT, INC., 2250 Eaton St., Garden Level, Denver, CO 80214-1210 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.	COLORADO RURAL HOUSING DEVELOPMENT CORP., 3621 West 73rd Avenue, Suite C, Westminster, CO 80030 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.
COMMUNITY ACTION AGENCY OF OKLAHOMA CITY AND OKLAHOMA/CANADIAN COUNTIES, INC., 319 SW 25th Street, Oklahoma City, OK 73109 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.	COMMUNITY SERVICES LEAGUE, 300 W. Maple Ave., Independence, MO 64050-2818 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.
COMMUNITY ACTION DULUTH, 19 N. 21st Avenue West, Duluth, MN 55806 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	CONSUMER CREDIT COUNSELING SERVICE OF CENTRAL OKLAHOMA, 3230 N. Rockwell Avenue, Bethany, OK 73008 Grant Type: Comprehensive. Amount Awarded: \$52,538.68.
COMMUNITY ACTION PARTNERSHIP OF SUBURBAN HENNEPIN, 33 10th Ave. South, Suite 150, Hopkins, MN 55343-1303 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.	CONSUMER CREDIT COUNSELING SERVICE, INC., 1201 W. Walnut St., P.O. Box 843, Salina, KS 67402-0843 Grant Type: Comprehensive. Amount Awarded: \$63,384.90.
COMMUNITY ACTION PROJECT OF TULSA, 4606 South Garnett Road, Suite 100, Tulsa, OK 74146 Grant Type: Comprehensive. Amount Awarded: \$41,692.45.	CRAWFORD SEBASTIAN COMMUNITY DEVELOPMENT COUNCIL, 4831 Armour St., P.O. Box 4069, Fort Smith, AR 72914 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.
COMMUNITY ACTION SERVICES, 815 South Freedom Blvd., Suite 100, Provo, UT 84601 Grant Type: Comprehensive. Amount Awarded: \$67,000.31.	CREDIT ADVISORS FOUNDATION, 1818 S. 72nd Street, Omaha, NE 68124 Grant Type: Comprehensive. Amount Awarded: \$74,231.13.
COMMUNITY ACTION, INCORPORATED OF ROCK AND WALWORTH COUNTIES, 200 W. Milwaukee Street, Janesville, WI 53548 Grant Type: Comprehensive. Amount Awarded: \$25,000.00.	DAKOTA COUNTY COMMUNITY DEVELOPMENT AGENCY, 1228 Town Centre Drive, Eagan, MN 55123 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.
COMMUNITY DEVELOPMENT CORPORATION OF BROWNSVILLE, 901 East Levee Street, Brownsville, TX 78520-5804 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	ECONOMIC OPPORTUNITY AGENCY OF WASHINGTON COUNTY, 614 E. Emma, Suite M401, Springdale, AR 72764 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.
COMMUNITY DEVELOPMENT SUPPORT ASSOCIATION, 2615 E. Randolph, Enid, OK 73701 Grant Type: Comprehensive. Amount Awarded: \$30,000.00.	HOUSING AUTHORITY OF THE CITY OF NORMAN, 700 North Berry Road, Norman, OK 73069 Grant Type: Comprehensive. Amount Awarded: \$41,692.45.
EL PASO COMMUNITY ACTION PROGRAM, PROJECT BRAVO, INC., 4838 Montana Ave., El Paso, TX 79903 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	HOUSING AUTHORITY OF THE CITY OF SHAWNEE, 601 West 7th Street, P.O. Box 3427, Shawnee, OK 74802-3427 Grant Type: Comprehensive. Amount Awarded: \$52,000.00.
FAMILY HOUSING ADVISORY SERVICES, INC., 2401 Lake Street, Omaha, NE 68111 Grant Type: Comprehensive. Amount Awarded: \$74,231.13.	HOUSING OPTIONS PROVIDED FOR THE ELDERLY, 4265 Shaw Blvd., St. Louis, MO 63110-3526 Grant Type: Comprehensive. Amount Awarded: \$63,384.90.
FAMILY MANAGEMENT CREDIT COUNSELORS, INC., 1409 W. 4th St., Waterloo, IA 50702-2907 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.	HOUSING PARTNERS OF TULSA, INCORPORATED, 415 E. Independence, P.O. Box 6369, Tulsa, OK 74106 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.
HIGH PLAINS COMMUNITY DEVELOPMENT, CORP., 130 E. 2nd Street, Chadron, NE 69337 Grant Type: Comprehensive. Amount Awarded: \$70,615.72.	HOUSING SOLUTIONS FOR THE SOUTHWEST, 295 Girard St., Durango, CO 81303 Grant Type: Comprehensive. Amount Awarded: \$58,807.00.
HOME OPPORTUNITIES MADE EASY, INC. (HOME, INC.), 1111 Ninth Street, Suite 210, Des Moines, IA 50314 Grant Type: Comprehensive. Amount Awarded: \$53,241.00.	HUMAN RESOURCE DEVELOPMENT COUNCIL OF DISTRICT IX, INC., 32 S. Tracy Avenue, Bozeman, MT 59715 Grant Type: Comprehensive. Amount Awarded: \$67,000.31.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

HOUSING AND CREDIT COUNSELING, INCORPORATED, 1195 SW Buchanan St., Ste. 101, Topeka, KS 66604-1183 Grant Type: Comprehensive. Amount Awarded: \$52,538.68.	INTERFAITH OF NATRONA COUNTY, INCORPORATED, 1514 East 12th Street, #303, Casper, WY 82601 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.
IOWA CITIZENS FOR COMMUNITY IMPROVEMENT, 2005 Forest Avenue, Des Moines, IA 50311 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.	LEGAL AID OF WESTERN MISSOURI, 1125 Grand Boulevard, Suite 2000, Kansas City, MO 64106 Grant Type: Comprehensive. Amount Awarded: \$70,615.72.
JEFFERSON COMMUNITY ACTION PROGRAM, 1221 Elmwood Park Blvd., Ste. 402, Jefferson, LA 70123 Grant Type: Comprehensive. Amount Awarded: \$49,929.00.	
JONESBORO URBAN RENEWAL AND HOUSING AUTHORITY HOUSING AND COMMUNITY DEVELOPMENT ORGANIZATION (JURHA HCDO), 330 Union Street, Jonesboro, AR 72401 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.	NEIGHBOR TO NEIGHBOR, 1550 Blue Spruce Drive, Fort Collins, CO 80524 Grant Type: Comprehensive. Amount Awarded: \$46,743.00.
JUSTINE PETERSEN HOUSING AND REINVESTMENT CORP., 5031 Northrup Ave., St. Louis, MO 63110 Grant Type: Comprehensive. Amount Awarded: \$70,615.72.	NORTHEAST DENVER HOUSING CENTER, 1735 Gaylord St., Denver, CO 80206-1208 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
KI BOIS COMMUNITY ACTION FOUNDATION, INCORPORATED, 301 E. Main, P.O. Box 727, Stigler, OK 74462 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.	OGLALA SIOUX TRIBE PARTNERSHIP FOR HOUSING, INC., Old Ambulance Building, P.O. Box 3001, Pine Ridge, SD 57770 Grant Type: Comprehensive. Amount Awarded: \$59,769.49.
LAKE COUNTY COMMUNITY HOUSING ORGANIZATION AN, 407 Main Street, SW, P.O. Box 146, Ronan, MT 59864 Grant Type: Comprehensive. Amount Awarded: \$25,000.00.	PARTNERS IN HOUSING, INC., 455 Gold Pass Heights, Colorado Springs, CO 80906 Grant Type: Comprehensive. Amount Awarded: \$34,000.00.
SAINT PAUL DEPARTMENT OF PLANNING AND ECONOMIC DEV., 25 West 4th Street, Suite 1200, St. Paul, MN 55102-1634 Grant Type: Comprehensive. Amount Awarded: \$63,384.90.	STILLWATER HOUSING AUTHORITY, 807 S. Lowry, Stillwater, OK 74074 Grant Type: Comprehensive. Amount Awarded: \$35,000.00.
SAINT PAUL URBAN LEAGUE, 401 Selby Ave., St. Paul, MN 55102-1724 Grant Type: Comprehensive. Amount Awarded: \$30,000.00.	TEXAS RIO GRANDE LEGAL AID, 300 S. Texas Blvd., Weslaco, TX 78596 Grant Type: Comprehensive. Amount Awarded: \$74,231.13.
SALT LAKE COMMUNITY ACTION PROGRAM, 764 S. 200 W., Salt Lake City, UT 84101-2710 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	TIERRA DEL SOL HOUSING CORPORATION, P.O. Box 2626, 880 Anthony Dr., Anthony, NM 88021 Grant Type: Comprehensive. Amount Awarded: \$59,769.40.
SCI-TECH DEVELOPMENT, INC. (SDI), 5401 North 76th Street, Suite 103, Milwaukee, WI 53218 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.	TRI-COUNTY ACTION PROGRAM, INCORPORATED, 700 W. Saint Germain St., Saint Cloud, MN 56301-3507 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.
SOUTH ARKANSAS COMMUNITY DEVELOPMENT, 406 Clay Street, Arkadelphia, AR 71923 Grant Type: Comprehensive. Amount Awarded: \$39,900.00.	UNITED CEREBRAL PALSY OF GREATER HOUSTON, INC., 4500 Bissonnet, Suite 340, Bellaire, TX 77401 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
SOUTHEASTERN NORTH DAKOTA COMMUNITY ACTION AG, 3233 S. University Dr., Fargo, ND 58104-6221 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	UNITED NEIGHBORS, INC., 808 Harrison Street, Davenport, IA 52803 Grant Type: Comprehensive. Amount Awarded: \$56,266.00.
SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES, INC., 166 E. 4th St., Suite 200, St. Paul, MN 55101 Grant Type: Comprehensive. Amount Awarded: \$56,154.08.	UNIVERSAL HOUSING DEVELOPMENT CORPORATION, 301 E. 3rd St., P.O. Box 846, Russellville, AR 72811-5109 Grant Type: Comprehensive. Amount Awarded: \$63,384.90.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

UTAH STATE UNIVERSITY—FAMILY LIFE CENTER HOUSING AND FINANCIAL COUNSELING SERVICES, 493 N. 700 E., Logan, UT 84321 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	WEST CENTRAL MISSOURI COMMUNITY ACTION AGENCY, 106 W. 4th St., P.O. Box 125, Appleton City, MO 64724 Grant Type: Comprehensive. Amount Awarded: \$56,154.08.
WEST CENTRAL WISCONSIN COMMUNITY ACTION AGENCY, INC., 525 Second Street, P.O. Box 308, Glenwood City, WI 54751 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	YOUR COMMUNITY CONNECTION, 2261 Adams Ave., Ogden, UT 84401-1510 Grant Type: Comprehensive. Amount Awarded: \$27,603.00.
YOUTH EDUCATION AND HEALTH IN SOULARD, 1919 South Broadway, St. Louis, MO 63104 Grant Type: Comprehensive. Amount Awarded: \$35,000.00.	
Philadelphia (LHCA—COMP)	
ACCOMACK—NORTHAMPTON PLANNING DISTRICT COMMISSION, 23372 Front Street, P.O. Box 417, Accomack, VA 23301 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	ASIAN AMERICANS FOR EQUALITY, 111 Division St., New York, NY 10002 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.
AFFORDABLE HOMES OF MILLVILLE ECUMENICAL, 400 East Main St., P.O. Box 241, Millville, NJ 08332 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.	BELMONT SHELTER CORPORATION, 1195 Main Street, Buffalo, NY 14209-2196 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.
ALBANY COUNTY RURAL HOUSING ALLIANCE, INC., 24 Martin Road, P.O. Box 407, Voorheesville, NY 12186 Grant Type: Comprehensive. Amount Awarded: \$67,000.31.	BERKSHIRE COUNTY REGIONAL HOUSING AUTHORITY-H, 150 North Street, Suite 28, Pittsfield, MA 01201 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.
ALLEGANY COUNTY COMMUNITY OPPORTUNITIES AND RURAL DEVELOPMENT (ACCORD) CORP., 84 Schuyler Street, P.O. Box 573, Belmont, NY 14813-1051 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	BETTER NEIGHBORHOODS, INCORPORATED, 986 Albany St., Schenectady, NY 12307 Grant Type: Comprehensive. Amount Awarded: \$51,897.00.
ANNE ARUNDEL COUNTY ECONOMIC OPPORTUNITY COMM., 251 West St., P.O. Box 1951, Annapolis, MD 21404 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	BISHOP SHEEN ECUMENICAL HOUSING FOUNDATION, 935 East Ave., Suite 300, Rochester, NY 14607-2216 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.
ARUNDEL COMMUNITY DEVELOPMENT SERVICE INC., 2666 Riva Road, Suite 210, Annapolis, MD 21401 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.	BLAIR COUNTY COMMUNITY ACTION AGENCY, 2100 Sixth Avenue, Altoona, PA 16602 Grant Type: Comprehensive. Amount Awarded: \$50,506.00.
BURLINGTON COUNTY COMMUNITY ACTION PROGRAM, One Van Sciver Parkway, Willingboro, NJ 08046 Grant Type: Comprehensive. Amount Awarded: \$38,700.00.	CHILDREN'S & FAMILY SERVICE A/K/A FAMILY SERVICE AGENCY, 535 Marmion Avenue, Youngstown, OH 44502-2323 Grant Type: Comprehensive. Amount Awarded: \$23,158.00.
CECIL COUNTY HOUSING AGENCY, 5 Brown Court, Elkton, MD 21921 Grant Type: Comprehensive. Amount Awarded: \$28,520.00.	CHRISTIAN CREDIT COUNSELORS, INC., 24300 Southfield Road, Ste. 215, Southfield, MI 48075 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.
CENTER FOR FAMILY SERVICES, INCORPORATED, 213 W. Center Street, Meadville, PA 16335-3406 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.	COMMISSION ON ECONOMIC OPPORTUNITY OF LUZERNE, 165 Amber Lane, P.O. Box 1127, Wilkes Barre, PA 18703-1127 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.
CENTRAL VERMONT COMMUNITY ACTION COUNCIL, INC., 195 U.S. Route 302—Berlin, Barre, VT 05641 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.	COMMUNITY ACTION AGENCY, 1214 Greenwood Avenue, Jackson, MI 48203 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.
CHAUTAUQUA OPPORTUNITIES, INCORPORATED, 17 W. Courtney St., Dunkirk, NY 14048-2754 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.	COMMUNITY ACTION COMMISSION OF BELMONT COUNTY, 153½ W. Main Street, Saint Clairsville, OH 43950 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

CHESTER COMMUNITY IMPROVEMENT PROJECT, 412 Avenue of the States, P.O. BOX 541, Chester, PA 19013-0541 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.	COMMUNITY ACTION COMMITTEE OF LEHIGH VALLEY, INC., 1337 E. 5th Street, Bethlehem, PA 18015 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.
COMMUNITY ACTION IN SELF HELP, INCORPORATED, 48 Water St., Lyons, NY 14489-1244 Grant Type: Comprehensive. Amount Awarded: \$36,500.00.	COMMUNITY SERVICE NETWORK, INC., 52 Broadway, Stoneham, MA 02180-1003 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.
COMMUNITY ACTION COMMISSION OF BELMONT COUNTY, 153½ W. Main Street, Saint Clairsville, OH 43950 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.	COMMUNITY UNIFIED TODAY, INCORPORATED, 152 Genesee Street, P.O. Box 268, Geneva, NY 14456 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
COMMUNITY ACTION COMMITTEE OF LEHIGH VALLEY, INC., 1337 E. 5th Street, Bethlehem, PA 18015 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	CONCORD AREA TRUST FOR COMMUNITY HOUSING (CATCH), 79 South State Street, Concord, NH 03301 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.
COMMUNITY ACTION IN SELF HELP, INCORPORATED, 48 Water St., Lyons, NY 14489-1244 Grant Type: Comprehensive. Amount Awarded: \$36,500.00.	CONSUMER CREDIT AND BUDGET COUNSELING, 299 S. Shore Road, Route 9 South, Marmora, NJ 08223-0866 Grant Type: Comprehensive. Amount Awarded: \$48,923.27.
COMMUNITY ACTION PROGRAM FOR MADISON COUNTY, 3 East Main Street, P.O. Box 249, Morrisville, NY 13408 Grant Type: Comprehensive. Amount Awarded: \$37,500.00.	CORTLAND HOUSING ASSISTANCE COUNCIL, INCORPORATED, 159 Main St., Cortland, NY 13045 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
COMMUNITY ASSISTANCE NETWORK, 7701 Dunmanway, Baltimore, MD 21222-5437 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.	COUNTY OF NASSAU ECONOMIC DEVELOPMENT—OFFICE OF HOUSING & INTERGOVERNMENTAL AFFAIRS, 40 Main Street, Suite B, Hempstead, NY 11550 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
COMMUNITY HOUSING SOLUTIONS, 12114 Larchmere Blvd., Cleveland, OH 44120 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.	DETROIT NON-PROFIT HOUSING CORPORATION, 8904 Woodward Ave., Suite 279, Considine Center, Detroit, MI 48202 Grant Type: Comprehensive. Amount Awarded: \$59,769.49.
FAIR HOUSING CONTACT SERVICE, 441 Wolf Ledges Pkwy., Ste. 200, Akron, OH 44311 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.	GARRETT COUNTY COMMUNITY ACTION COMMITTEE, INC., 104 E. Center Street, Oakland, MD 21550-1328 Grant Type: Comprehensive. Amount Awarded: \$67,000.31.
FAIR HOUSING COUNCIL OF NORTHERN NEW JERSEY, 131 Main St., Suite 140, Hackensack, NJ 07601-7140 Grant Type: Comprehensive. Amount Awarded: \$41,692.45.	GRAND RAPIDS URBAN LEAGUE, 745 Eastern Ave., SE., Grand Rapids, MI 49503-5544 Grant Type: Comprehensive. Amount Awarded: \$44,330.00.
FAIR HOUSING RESOURCE CENTER, 54 South State Street, Suite 303, Painesville, OH 44077 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.	GRANITE STATE INDEPENDENT LIVING (GSIL), 21 Chenell Drive, Concord, NH 03301 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.
FAITH FELLOWSHIP COMMUNITY DEVELOPMENT CORPORATION, 2707 Main Street, Sayreville, NJ 08872 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	GREATER BOSTON LEGAL SERVICES, 197 Friend Street, Boston, MA 02114-1802 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
FREDERICK COMMUNITY ACTION AGENCY, 100 S. Market St., Frederick, MD 21701-5527 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	GREATER EAST SIDE COMMUNITY ASSOCIATION, 2804 N. Franklin Avenue, Flint, MI 48506 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.
FRIENDS OF THE NORTH COUNTRY, 1 Mill Street, P.O. Box 446, Keeseville, NY 12944 Grant Type: Comprehensive. Amount Awarded: \$60,000.00.	GREATER ERIE COMMUNITY ACTION AGENCY, 18 W. 9th St., Erie, PA 16501-1343 Grant Type: Comprehensive. Amount Awarded: \$39,620.00.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

GARDEN STATE CONSUMER CREDIT COUNSELING, INC./NOVADEBT, 225 Willowbrook Road, Freehold, NJ 07728 Grant Type: Comprehensive. Amount Awarded: \$22,785.00.	HAGERSTOWN NEIGHBORHOOD DEVELOPMENT PARTNERSHIP, INC., 21 East Franklin Street, Hagerstown, MD 21740 Grant Type: Comprehensive. Amount Awarded: \$25,000.00.
GARFIELD JUBILEE ASSOCIATION, INCORPORATED, 5138 Penn Ave., Pittsburgh, PA 15224-1616 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.	HARFORD COUNTY HOUSING AGENCY, 15 South Main Street, Suite 106, Bel Air, MD 21014 Grant Type: Comprehensive. Amount Awarded: \$49,000.00.
HOME PARTNERSHIP, INCORPORATED, Rumsey Towers Building, Suite 301, 626 Towne Center Drive, Joppatowne, MD 21085 Grant Type: Comprehensive. Amount Awarded: \$36,000.00.	HOUSING COUNSELING SERVICES, INCORPORATED, 2410 17th St., NW., Adams Alley Entrance, Washington, DC 20009 Grant Type: Comprehensive. Amount Awarded: \$52,538.68.
HOME REPAIR SERVICES OF KENT COUNTY, INC., 1100 S. Division Avenue, Grand Rapids, MI 49507 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	HOUSING INITIATIVES PARTNERSHIP, INCORPORATED, 6525 Belcrest Road, Suite 555, Hyattsville, MD 20782 Grant Type: Comprehensive. Amount Awarded: \$56,154.08.
HOMEFRONT, INC., 560 Delaware Avenue, Suite 101, Buffalo, NY 14202 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	HOUSING OPPORTUNITIES MADE EQUAL, INCORPORATE, 700 East Franklin Street, Suite 3A, Richmond, VA 23219 Grant Type: Comprehensive. Amount Awarded: \$70,615.72.
HOUSING ALLIANCE OF YORK, 35 South Duke Street, York, PA 17401-1106 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.	HOUSING PARTNERSHIP FOR MORRIS COUNTY, 2 E. Blackwell Street, Suite 12, Dover, NJ 07801 Grant Type: Comprehensive. Amount Awarded: \$35,000.00.
HOUSING AUTHORITY OF THE CITY OF PATERSON, 60 Van Houten Street, P.O. Box H, Paterson, NJ 07509 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	HUMAN DEVELOPMENT SERVICES OF WESTCHESTER, INC., 930 Mamaroneck Avenue, Mamaroneck, NY 10543 Grant Type: Comprehensive. Amount Awarded: \$40,600.00.
HOUSING AUTHORITY OF THE COUNTY OF BUTLER, 114 Woody Drive, Butler, PA 16001 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	INNER CITY CHRISTIAN FEDERATION, 920 Cherry SE., Grand Rapids, MI 49506 Grant Type: Comprehensive. Amount Awarded: \$67,000.31.
HOUSING COUNCIL IN MONROE COUNTY, INCORPORATE, 183 Main St. E., Suite 1100, Rochester, NY 14604 Grant Type: Comprehensive. Amount Awarded: \$48,923.27.	MARGERT COMMUNITY CORPORATION, 325 Beach 37th Street, Far Rockaway, NY 11691-1510 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.
ISLES, INCORPORATED, 619 Greenwood Avenue, Trenton, NJ 08609 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.	MARYLAND RURAL DEVELOPMENT CORPORATION, 101 Cedar Ave., P.O. Box 739, Greensboro, MD 21639-0739 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.
KANAWHA INSTITUTE FOR SOCIAL RESEARCH & ACTION, INC., 124 Marshall Avenue, Dunbar, WV 25064 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.	METRO-INTERFAITH SERVICES, INCORPORATED, 21 New St., Binghamton, NY 13903 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
KEUKA HOUSING COUNCIL, 160 Main Street, Penn Yan, NY 14527 Grant Type: Comprehensive. Amount Awarded: \$35,909.00.	MID-OHIO REGIONAL PLANNING COMMISSION, 285 E. Main St., Columbus, OH 43215-5272 Grant Type: Comprehensive. Amount Awarded: \$33,000.00.
LACONIA AREA COMMUNITY LAND TRUST, 658 Union Avenue, Laconia, NH 03246 Grant Type: Comprehensive. Amount Awarded: \$25,000.00.	MONMOUTH COUNTY BOARD OF CHOSEN FREEHOLDERS/MONMOUTH COUNTY DIVISION OF SOCIAL SERVICES, P.O. Box 3000, Freehold, NJ 07728 Grant Type: Comprehensive. Amount Awarded: \$66,914.00.
LANSING AFFORDABLE HOMES, INC., 6810 South Cedar, Ste. #15, Lansing, MI 48911 Grant Type: Comprehensive. Amount Awarded: \$41,692.45.	MT. AIRY, U S A, 6703 Germantown Ave.—Suite 200, Philadelphia, PA 19119 Grant Type: Comprehensive. Amount Awarded: \$32,000.00.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

LIGHTHOUSE COMMUNITY DEVELOPMENT, 46156 Woodward Avenue, Pontiac, MI 48342 Grant Type: Comprehensive. Amount Awarded: \$88,692.76.	NATIONAL COUNCIL ON AGRICULTURAL LIFE AND LABOR RESEARCH FUND, INC., 363 Saulsbury Road, Dover, DE 19904-2722 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.
LYNCHBURG COMMUNITY ACTION GROUP, INCORPORATED, 926 Commerce Street, Lynchburg, VA 24504 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.	NEAR NORTHEAST COMMUNITY IMPROVEMENT CORP., 1326 Florida Ave., NE., Washington, DC 20002-7108 Grant Type: Comprehensive. Amount Awarded: \$29,521.00.
NEIGHBORHOOD HOUSING SERVICES OF NEW BRITAIN, INC., 223 Broad St., New Britain, CT 06053-4107 Grant Type: Comprehensive. Amount Awarded: \$35,000.00.	NORTHWEST MICHIGAN HUMAN SERVICES AGENCY, INC., 3963 Three Mile Road, Traverse City, MI 49686-9164 Grant Type: Comprehensive. Amount Awarded: \$77,846.53.
NEIGHBORHOOD HOUSING SERVICES OF NEW YORK CITY (NHS OF NYC), 307 West 36th St., 12 floor, New York, NY 10018-6495 Grant Type: Comprehensive. Amount Awarded: \$63,384.90.	NORTHWEST OHIO DEVELOPMENT AGENCY, 432 N. Superior Street, Toledo, OH 43604 Grant Type: Comprehensive. Amount Awarded: \$36,000.00.
NEIGHBORS HELPING NEIGHBORS, INC., 443 39th Street, Suite 202, Brooklyn, NY 11232 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.	NY STATE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (OMRDD), 44 Holland Avenue, Albany, NY 12229-0001 Grant Type: Comprehensive. Amount Awarded: \$70,615.72.
NEIGHBORWORKS @ GREATER MANCHESTER, 20 Merrimack Street, Manchester, NH 03101 Grant Type: Comprehensive. Amount Awarded: \$59,769.49.	OAKLAND COUNTY HOUSING COUNSELING, 250 Elizabeth Lake Road, Suite 1900, Pontiac, MI 48341-0414 Grant Type: Comprehensive. Amount Awarded: \$62,000.00.
NEW JERSEY CITIZEN ACTION, 744 Broad Street, Suite 2080, Newark, NJ 07102 Grant Type: Comprehensive. Amount Awarded: \$88,692.76.	OAKLAND LIVINGSTON HUMAN SERVICE AGENCY, 196 Cesar E. Chavez Ave., P.O. Box 430598, Pontiac, MI 48343-0598 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
NEW RIVER COMMUNITY ACTION, INC., 644 West Main Street, Radford, VA 24141 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	OPPORTUNITIES FOR CHENANGO, INC., 44 W. Main St., P.O. Box 470, Norwich, NY 13815-1613 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.
NEWPORT NEWS OFFICE OF HUMAN AFFAIRS, 392 Maple Ave., P.O. Box 37, Newport News, VA 23607 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.	OSWEGO HOUSING DEVELOPMENT COUNCIL, INC., 2971 County Rte 26, P.O. Box 147, Parish, NY 13131 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.
NORTHFIELD COMMUNITY LOCAL DEVELOPMENT CORPORATION, 160 Heberton Ave., Staten Island, NY 10302 Grant Type: Comprehensive. Amount Awarded: \$48,923.27.	PEOPLE INCORPORATED OF SOUTHWEST VIRGINIA, 1173 W. Main Street, Abingdon, VA 24210-2428 Grant Type: Comprehensive. Amount Awarded: \$44,564.00.
PHILADELPHIA COUNCIL FOR COMMUNITY ADVANCEMENT, 100 North 17th Street, Suite 500, Philadelphia, PA 19103-2736 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	PIEDMONT HOUSING ALLIANCE, 111 Monticello Ave., Ste. 104, Charlottesville, VA 22902 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.
PLYMOUTH REDEVELOPMENT AUTHORITY, 11 Lincoln Street, Plymouth, MA 02360 Grant Type: Comprehensive. Amount Awarded: \$45,000.00.	PRO-HOME, INC., P.O. Box 2793, Taunton, MA 02780 Grant Type: Comprehensive. Amount Awarded: \$52,538.68.
PRINCE WILLIAM COUNTY VIRGINIA COOPERATIVE EXTENSION, 8033 Ashton Ave., Ste. 105, Manassas, VA 20109-8202 Grant Type: Comprehensive. Amount Awarded: \$74,231.13.	PUTNAM COUNTY HOUSING CORPORATION, 11 Seminary Hill Road, Carmel, NY 10512 Grant Type: Comprehensive. Amount Awarded: \$36,000.00.
QUIN RIVERS, INC., 104 Roxbury Industrial Center, Charles City, VA 23030 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	RURAL ULSTER PRESERVATION COMPANY, 289 Fair St., Kingston, NY 12401 Grant Type: Comprehensive. Amount Awarded: \$56,000.00.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

QUINCY COMMUNITY ACTION PROGRAMS, INC., 1509 Hancock St., Quincy, MA 02169-5200 Grant Type: Comprehensive. Amount Awarded: \$40,000.00.	SCHUYLKILL COMMUNITY ACTION, 206 North Second Street, Pottsville, PA 17901 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.
ROCKLAND HOUSING ACTION COALITION, 95 New Clarkstown Road, Nanuet, NY 10954 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.	SENIOR CITIZENS UNITED COMMUNITY SERVICES OF CAMDEN COUNTY, INC., 146 Black Horse Pike, Mount Ephraim, NJ 08059-2007 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
RURAL SULLIVAN HOUSING CORPORATION, 6 Pelton Street, P.O. Box 1497, Monticello, NY 12701-1128 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	SKYLINE COMMUNITY ACTION PROGRAM, INCORPORATED, 31 Stanard Street, P.O. Box 508, Stanardsville, VA 22973 Grant Type: Comprehensive. Amount Awarded: \$63,950.00.
SOUTHERN APPALACHIAN LABOR SCHOOL FOUNDATION, INC., P.O. Box 127, 735 Beards Fork Rd., Beards Fork, WV, Kincaid, WV 25119 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.	SOUTHERN MARYLAND TRI-COUNTY COMMUNITY ACTION, 8383 Leonardtown Rd., P.O. Box 280, Hughesville, MD 20637 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.
SOUTHERN HILLS PRESERVATION CORPORATION, 2383 Route 11 Unit 1, LaFayette, NY 13084 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	SOUTHWESTERN PENNSYLVANIA LEGAL SERVICES INC., 10 West Cherry Avenue, Central Office, Washington, PA 15301 Grant Type: Comprehensive. Amount Awarded: \$70,615.72.
STARK METROPOLITAN HOUSING AUTHORITY, 400 E. Tuscarawas Street, Canton, OH 44702 Grant Type: Comprehensive. Amount Awarded: \$32,146.00.	TABOR COMMUNITY SERVICES, INC., 308 East King St., Lancaster, PA 17608-1676 Grant Type: Comprehensive. Amount Awarded: \$56,154.08.
TEDFORD HOUSING, 34 Federal, Brunswick, ME 04011 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.	TELAMON CORPORATION, 111 Henry St., P.O. Box 500, Gretna, VA 24557-0500 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.
THE SOUTHEASTERN TIDEWATER OPPORTUNITY PROJECT, 2551 Alameda Ave., Norfolk, VA 23513-2443 Grant Type: Comprehensive. Amount Awarded: \$59,769.49.	THE TREHAB CENTER INC., 10 Public Avenue, P.O. Box 366, Montrose, PA 18801-0366 Grant Type: Comprehensive. Amount Awarded: \$30,000.00.
THE URBAN LEAGUE OF RHODE ISLAND, 246 Prairie Ave., Providence, RI 02905-2397 Grant Type: Comprehensive. Amount Awarded: \$48,923.27.	TOTAL ACTION AGAINST POVERTY IN ROANOKE VALLEY, 145 Campbell Ave., Suite 700, Roanoke, VA 24011 Grant Type: Comprehensive. Amount Awarded: \$51,536.03.
THE WAY HOME, 214 Spruce Street, Manchester, NH 03103 Grant Type: Comprehensive. Amount Awarded: \$52,055.00.	TRI-CITY PEOPLES CORPORATION, 675 S. 19th Street, Newark, NJ 07103 Grant Type: Comprehensive. Amount Awarded: \$52,538.68.
TRI-COUNTY HOUSING COUNCIL, 143 Hibbard Road, P.O. Box 451, Big Flats, NY 14814 Grant Type: Comprehensive. Amount Awarded: \$32,997.00.	TROY REHABILITATION AND IMPROVEMENT PROGRAM, 415 River Street, Ste. 3, Troy, NY 12180, Main Office, Troy, NY 12180 Grant Type: Comprehensive. Amount Awarded: \$61,500.00.
UNITED NEIGHBORHOOD CENTERS OF LACKAWANNA COUNTY, 425 Alder Street, Scranton, PA 18505 Grant Type: Comprehensive. Amount Awarded: \$67,000.31.	WASHINGTON COUNTY COMMUNITY ACTION COUNCIL, 101 Summit Ave., Hagerstown, MD 21740 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.
WESTCHESTER RESIDENTIAL OPPORTUNITIES, INCORPORATED, 470 Mamaroneck Ave., Suite 410, White Plains, NY 10605-1830 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.	WESTERN CATSKILLS COMMUNITY REVITALIZATION COUNCIL, INC., 125 Main Street, Box A, Stamford, NY 12167 Grant Type: Comprehensive. Amount Awarded: \$27,200.00.
WORKING IN NEIGHBORHOODS, 1814 Dreman Avenue, Cincinnati, OH 45223 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.	WSOS COMMUNITY ACTION COMMISSION, INC., 109 S. Front Street, P.O. Box 590, Fremont, OH 43420 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

YWCA DELAWARE, 153 E. Chestnut Hill Road, Robscott Building, Suite 102, Newark, DE 19713 Grant Type: Comprehensive. Amount Awarded: \$59,769.49.	
Santa Ana (LHCA—COMP)	
ACCESS INCORPORATED, 3630 Aviation Way, P.O. Box 4666, Medford, OR 97501 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	LAO FAMILY COMMUNITY DEVELOPMENT, INC., 1551–23rd Avenue, Oakland, CA 94606 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.
ADMINISTRATION OF RESOURCES AND CHOICES, P.O. Box 86802, Tucson, AZ 85754 Grant Type: Comprehensive. Amount Awarded: \$34,461.63.	LEGAL AID SOCIETY OF HAWAII, 924 Bethel Street, P.O. Box 37375, Honolulu, HI 96813 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
ANAHEIM HOUSING AUTHORITY—ANAHEIM HOUSING COUNSELING AGENCY, 201 S. Anaheim Blvd., Suite 501, Anaheim, CA 92805 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	MISSION ECONOMIC DEVELOPMENT ASSOCIATION (MEDA), 3505 20th St., San Francisco, CA 94110 Grant Type: Comprehensive. Amount Awarded: \$45,307.86.
ASIAN INCORPORATED, 1167 Mission Street, 4th Floor, San Francisco, CA 94103 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	NEIGHBORHOOD HOUSE ASSOCIATION, 841 S. 41st Street, San Diego, CA 92113 Grant Type: Comprehensive. Amount Awarded: \$63,384.90.
BYDESIGN FINANCIAL SOLUTIONS, DBA CCCS OF LOS ANGELES, 6001 E. Washington Blvd., Suite 200, Los Angeles, CA 90040–2922 Grant Type: Comprehensive. Amount Awarded: \$70,615.72.	OPEN DOOR COUNSELING CENTER, 34420 SW. Tualatin Valley Hwy., Hillsboro, OR 97123–5470 Grant Type: Comprehensive. Amount Awarded: \$74,231.13.
COMMUNITY ACTION PARTNERSHIP, 124 New Sixth Street, Lewiston, ID 83501 Grant Type: Comprehensive. Amount Awarded: \$59,769.49.	ORANGE COUNTY FAIR HOUSING COUNCIL, INC., 201 S. Broadway, Santa Ana, CA 92701–5633 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.
COMMUNITY HOUSING DEVELOPMENT CORPORATION OF NORTH RICHMOND, 1535A 3rd Street, Richmond, CA 94801 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.	PACIFIC COMMUNITY SERVICES, INC., 329 Railroad Ave., Pittsburg, CA 94565–2245 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.
CONSUMER CREDIT COUNSELING SERVICE OF ORANGE COUNTY, 1920 Old Tustin Ave., (P.O. Box 11330, Santa Ana, CA 92711–1330) Santa Ana, CA 92705 Grant Type: Comprehensive. Amount Awarded: \$67,000.31.	PROJECT SENTINEL, 430 Sherman Avenue, Suite 308, Palo Alto, CA 94306 Grant Type: Comprehensive. Amount Awarded: \$77,846.53.
CONSUMER CREDIT COUNSELING SERVICE OF SAN FRANCISCO, 595 Market Street, 15th Floor, San Francisco, CA 94105 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	SACRAMENTO NEIGHBORHOOD HOUSING SERVICES, INC., 2400 Alhambra Blvd., P.O. Box 5420, Sacramento, CA 95817 Grant Type: Comprehensive. Amount Awarded: \$38,077.04.
CONSUMER CREDIT COUNSELING SERVICE OF SOUTHERN NEVADA, 2650 S. Jones Blvd., Las Vegas, NV 89146 Grant Type: Comprehensive. Amount Awarded: \$30,846.23.	SAN DIEGO HOME LOAN COUNSELING AND EDUCATION CENTER, 3180 University Avenue, Suite 120, San Diego, CA 92104 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
CONSUMER CREDIT COUNSELORS OF KERN AND TULARE COUNTIES, 5300 Lennox Ave., Ste. 200, Bakersfield, CA 93309–1662 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.	SOLID GROUND WASHINGTON, 1501 North 45th Street, Seattle, WA 98103–6708 Grant Type: Comprehensive. Amount Awarded: \$59,769.49.
EDEN COUNCIL FOR HOPE AND OPPORTUNITY (ECHO), 770 A St., Hayward, CA 94541–3956 Grant Type: Comprehensive. Amount Awarded: \$41,692.45.	SOUTHEASTERN ARIZONA GOVERNMENTS ORGANIZATION, 118 Arizona St., Bisbee, AZ 85603–1800 Grant Type: Comprehensive. Amount Awarded: \$20,000.00.
FAMILY HOUSING RESOURCES, 1700 East Fort Lowell Road, Suite 101, Tucson, AZ 85719 Grant Type: Comprehensive. Amount Awarded: \$59,769.49.	SPOKANE NEIGHBORHOOD ACTION PROGRAMS, 2116 East First Avenue, Spokane, WA 99202–3937 Grant Type: Comprehensive. Amount Awarded: \$74,231.13.

LOCAL HOUSING COUNSELING AGENCIES (352)—Continued

HOUSING AUTHORITY OF THE CITY OF FRESNO, 1331 Fulton Mall, P.O. Box 11985, Fresno, CA 93721 Grant Type: Comprehensive. Amount Awarded: \$56,154.08.	SPRINGBOARD NON PROFIT CONSUMER CREDIT MANAGEMENT INC., 4351 Latham Street, Riverside, CA 92501 Grant Type: Comprehensive. Amount Awarded: \$85,077.35.
HOUSING AUTHORITY OF THE COUNTY OF SANTA CRUZ, 2931 Mission St., Santa Cruz, CA 95060 Grant Type: Comprehensive. Amount Awarded: \$42,156.00.	UMPQUA COMMUNITY ACTION NETWORK, 2448 W. Harvard Blvd., Roseburg, OR 97470 Grant Type: Comprehensive. Amount Awarded: \$25,000.00.
INLAND MEDIATION BOARD, 60 East 9th Street, Suite 100, Upland, CA 91786 Grant Type: Comprehensive. Amount Awarded: \$27,230.82.	WASHOE COUNTY DEPT OF SENIOR SERVICES—SENIOR LAW PROJECT, 1155 E. Ninth St., Reno, NV 89512 Grant Type: Comprehensive. Amount Awarded: \$50,700.00.
INSTITUTE FOR HUMAN SERVICES, INC. (IHS), 546 Ka'aahi Street, Honolulu, HI 96817 Grant Type: Comprehensive. Amount Awarded: \$23,615.41.	LABOR'S COMMUNITY SERVICE AGENCY, 5818 N. 7th St., Ste. 100, Phoenix, AZ 85014-5810 Grant Type: Comprehensive. Amount Awarded: \$41,272.00.

STATE HOUSING FINANCE AGENCIES (17)

Atlanta (SHFA—COMP)

GEORGIA HOUSING AND FINANCE AUTHORITY, 60 Executive Park South, NE., Atlanta, GA 30329-2231 Grant Type: Comprehensive. Amount Awarded: \$193,280.13.	KENTUCKY HOUSING CORPORATION, 1231 Louisville Road, Frankfort, KY 40601 Grant Type: Comprehensive. Amount Awarded: \$88,208.13.
MISSISSIPPI HOME CORPORATION, 735 Riverside Drive, P.O. Box 23369, Jackson, MS 39225-3369 Grant Type: Comprehensive. Amount Awarded: \$126,416.25.	

Denver (SHFA—COMP)

IOWA FINANCE AUTHORITY, 2015 Grand Ave., Des Moines, IA 50312 Grant Type: Comprehensive. Amount Awarded: \$59,640.00.	NEW MEXICO MORTGAGE FINANCE AUTHORITY, 344 Fourth Street, SW., Albuquerque, NM 87102 Grant Type: Comprehensive. Amount Awarded: \$164,624.38.
MONTANA BOARD OF HOUSING, Box 200528, Helena, MT 59620 Grant Type: Comprehensive. Amount Awarded: \$164,624.38.	NORTH DAKOTA HOUSING FINANCE AGENCY, 1500 East Capitol Avenue, P.O. Box 1535, Bismarck, ND 58502-1535 Grant Type: Comprehensive. Amount Awarded: \$164,624.34.
SOUTH DAKOTA HOUSING DEVELOPMENT AUTHORITY, 221 South Central, P.O. Box 1237, Pierre, SD 57501-1237 Grant Type: Comprehensive. Amount Awarded: \$97,760.16.	

Philadelphia (SHFA—COMP)

MAINE STATE HOUSING AUTHORITY, 353 Water Street, Augusta, ME 04330 Grant Type: Comprehensive. Amount Awarded: \$123,000.00.	RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION, 44 Washington St., Providence, RI 02903-1721 Grant Type: Comprehensive. Amount Awarded: \$164,624.38.
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY, 735 E. Michigan Avenue, P.O. Box 30044, Lansing, MI 48909 Grant Type: Comprehensive. Amount Awarded: \$145,520.31.	VIRGINIA HOUSING DEVELOPMENT AUTHORITY, 601 S. Belvedere Street, Richmond, VA 23220 Grant Type: Comprehensive. Amount Awarded: \$171,180.00.
NEW HAMPSHIRE HOUSING FINANCE AUTHORITY, 32 Constitution Drive, Bedford, NH 03110 Grant Type: Comprehensive. Amount Awarded: \$50,000.00.	OHIO HOUSING FINANCE AGENCY, 57 E. Main Street, Columbus, OH 43215-5135 Grant Type: Comprehensive. Amount Awarded: \$88,208.13.
PENNSYLVANIA HOUSING FINANCE AGENCY, 211 North Front Street, Harrisburg, PA 17101-1406 Grant Type: Comprehensive. Amount Awarded: \$174,176.41.	

STATE HOUSING FINANCE AGENCIES (17)—Continued

Santa Ana (SHFA—COMP)

IDAHO HOUSING AND FINANCE ASSOCIATION, 565 West Myrtle, P.O. Box 7899, Boise, ID 83702 Grant Type: Comprehensive. Amount Awarded: \$135,968.28.	WASHINGTON STATE HOUSING FINANCE COMMISSION, 1000 2nd Avenue, Suite 2700, Seattle, WA 98104-1046 Grant Type: Comprehensive. Amount Awarded: \$164,624.38.
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HECM (2) INTERMEDIARY (HECM)

MONEY MANAGEMENT INTERNATIONAL INC., 9009 West Loop South, Suite 700, Houston, TX 77096-1719 Grant Type: HECM. Amount Awarded: \$1,135,000.00.	NATIONAL FOUNDATION FOR CREDIT COUNSELING, INC., 801 Roeder Road, Suite 900, Silver Spring, MD 20910-3372 Grant Type: HECM. Amount Awarded: \$1,865,000.00.
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[FR Doc. E8-6099 Filed 3-25-08; 8:45 am]
BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5141-N-05]

Conference Call Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting via conference call.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference. This meeting is open to the general public, which may participate by following the instructions below.

DATES: The conference call meeting will be held on Wednesday, April 9, 2008, from 2 p.m. to 5 p.m. eastern daylight time.

ADDRESSES: Information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can link onto the NFPA's Web site for instructions concerning how to participate, and for contact information for the conference call, in the section marked "Business" "Manufactured Housing Consensus Committee Information". The link can be found at: <http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm>.

Alternately, interested parties may contact Jill McGovern of NFPA at (617) 984-7404 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary, Office of

Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with sections 10(a) and (b) of the Federal Advisory Committee Act (5 U.S.C. app. 2) and 41 CFR 102-3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5403(a)(3). The Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured home construction and safety standards and procedural and enforcement regulations, and with developing and recommending proposed model installation standards to the Secretary.

The purpose of this conference call meeting is for the Committee to review and provide comments to the Secretary on a draft proposed rule for the On-Site Completion of Construction of Manufactured Homes.

Tentative Agenda

- A. Roll call.
- B. Welcome and opening remarks.
- C. Update on rules and appointment status.
- D. Full Committee meeting for discussion of the On-Site Completion of Construction of Manufactured Homes Draft Proposed Rule.
- E. Adjournment.

Dated: March 19, 2008.

Frank L. Davis,

General Deputy Assistant Secretary for Housing.

[FR Doc. E8-6098 Filed 3-25-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2008-N0042; 80221-1112-0000-F2]

Tehachapi Uplands Multi-species Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), we, the Fish and Wildlife Service (Service), advise the public of our intent to gather information necessary to prepare an Environmental Impact Statement (EIS) on the Tehachapi Uplands Multi-species Habitat Conservation Plan (MSHCP). Tejon Ranch is preparing the MSHCP to apply for a 50-year incidental take permit under section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, as amended, (Act). The permit is needed to authorize the incidental take of threatened and endangered species that could occur as a result of activities covered by the plan.

The Service provides this notice to (1) describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues to be included in the EIS. A similar Notice of Intent was published on June 25, 2004 (69 FR 35663) when this project was called the Tejon Condor Habitat

Conservation Plan. Because the project has been broadened to include additional species, this second Notice of Intent is being published to gather additional information.

DATES: Written comments should be received on or before April 25, 2008.

ADDRESSES: Written comments submitted to Mary Grim, Section 10 Program Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way, W-2605, Sacramento, CA 95825. Comments may also be sent by e-mail to: tu_hcp_eis@fws.gov. Comments previously received during the initial public scoping period will also be considered.

FOR FURTHER INFORMATION CONTACT: Mary Grim, U.S. Fish and Wildlife Service, at 916-414-6464.

SUPPLEMENTARY INFORMATION

Background

Section 9 of the Act and Federal regulations prohibit the "take" of wildlife species listed as endangered or threatened (16 U.S.C. 1538). The Act defines the term "take" as: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Pursuant to section 10(a)(1)(B) of the Act, the Service may issue permits to authorize "incidental take" of listed species. "Incidental Take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22. All species included on an incidental take permit would receive assurances under the Service's "No Surprises" regulation [50 CFR 17.22(b)(5) and 17.32(b)(5)].

Species proposed for coverage in the HCP are species that are currently listed as federally threatened or endangered or have the potential to become listed during the life of this MSHCP and have some likelihood to occur within the project area. Should any of the unlisted covered wildlife species become listed under the Act during the term of the permit, take authorization for those species would become effective upon listing. Six plant species and 28 animal species are known to occur within the area and would be covered by the MSHCP. Species may be added to or deleted from the list of proposed

covered species during the course of the development of the MSHCP based on further analysis, new information, agency consultation, and public comment. Currently, the MSHCP would include the following federally listed animal species: California condor (*Gymnogyps californianus*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), Valley elderberry longhorn beetle (*Democerus californicus dimorphus*), and Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*). The MSHCP would also include the following State listed and unlisted species: Tehachapi slender salamander (*Batrachoseps stebbinsi*), bald eagle (*Haliaeetus leucocephalus*), American peregrine falcon (*Falco peregrinus anatum*), little willow flycatcher (*Empidonax traillii brewsteri*), golden eagle (*Aquila chrysaetos*), white-tailed kite (*Elanus leucorux*), ringtail (*Bassariscus astutus*), tricolored blackbird (*Agelaius tricolor*), California spotted owl (*Strix occidentalis occidentalis*), Tehachapi pocket mouse (*Perognathus alticolus inexpectatus*), burrowing owl (*Athene cunicularia*), yellow-blotched salamander (*Ensatina eschscholtzi croceator*), western spadefoot (*Spea hammondi*), purple martin (*Progne subis*), northern goshawk (*Accipiter gentilis*), coast horned lizard (frontale and blainvilli populations) (*Phrynosoma coronatum*), Cooper's hawk (*Accipiter cooperii*), yellow-breasted chat (*Icteria virens*), prairie falcon (*Falco mexicanus*), northern harrier (*Circus cyaneus*), long-eared owl (*Asio otus*), two-striped garter snake (*Thamnophis hammondi*), round-leaved filaree (*Erodium macrophyllum*), Fort Tejon woolly sunflower (*Eriophyllum lanatum* var. *hallii*), Kusche's sandwort (*Amenaria macradenia* var. *kuschei*), Tehachapi buckwheat (*Eriogonum callistum*), American badger (*Taxidea taxus*), striped adobe lily (*Fritillaria striata*), and Tejon poppy (*Eschscholzia lemmonii* ssp. *Kernensis*).

Activities proposed to be covered by the MSHCP include limited private development; livestock grazing and range management; film production; maintenance and construction of underground utilities; recreation with the exception of hunting; existing commercial and residential improvements; farming and irrigation systems; repair, maintenance, and use of roads; and existing mineral extraction facilities. The MSHCP will propose a conservation strategy to minimize and mitigate to the maximum extent possible any impacts that would occur

to covered species as the result of the covered activities.

Environmental Impact Statement

The EIS will consider the proposed action (i.e., the issuance of a section 10(a)(1)(B) permit under the Act), no action (no section 10 permit), and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS. The EIS will also identify potentially significant impacts on biological resources, land use, air quality, water resources, transportation, and other environmental resource issues that could occur directly or indirectly with implementation of the proposed action and alternatives. Different strategies for avoiding, minimizing, and mitigating the impacts of incidental take may also be considered.

Environmental review of the EIS will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500-1508), other applicable regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR Section 1501.7 and 1508.22 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS. The primary purpose of the scoping process is to identify important issues raised by the public related to the proposed action. Written comments from interested parties are invited to ensure that the full range of issues related to the permit application is identified. Comments will only be accepted in written form. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Ken McDermond,

Deputy Regional Director, California Nevada Region, Sacramento, California.

[FR Doc. E8-6185 Filed 3-25-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****List of Programs Eligible for Inclusion in Fiscal Year 2008 Funding Agreements With Self-Governance Tribes**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service (Service), publish this notice to list programs or portions of programs that are eligible for inclusion in Fiscal Year 2008 funding agreements with self-governance tribes, and to list programmatic targets under section 405(c)(4) of the Tribal Self-Governance Act.

DATES: The programs and targets we list in this notice expire on September 30, 2008.

FOR FURTHER INFORMATION CONTACT:

Native American Liaison, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 330, Arlington, VA 22203; telephone, 703-358-2550; fax 703-358-1780 or Assistant Director for External Affairs, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240, telephone 202-208-6541, fax 202-501-6589.

SUPPLEMENTARY INFORMATION:**I. Background**

Title II of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103-413, the "Tribal Self-Governance Act" or the "Act") instituted a permanent self-governance program at the Department of the Interior (DOI). Under the self-governance program certain programs, services, functions, and activities, or portions thereof, in DOI bureaus other than the Bureau of Indian Affairs (BIA) are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Act, the Secretary of the Interior (Secretary) is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for each non-BIA bureau.

Under the Act, two categories of non-BIA programs are eligible for self-governance annual funding agreements (AFAs):

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by DOI

that is "otherwise available to Indian tribes or Indians" can be administered by a tribal government through a self-governance AFA. DOI interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended). Section 403(b)(2) also specifies that "nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided by law."

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of "special geographic, historical, or cultural significance" to a self-governance tribe.

Under section 403(k) of the Act, AFAs cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance AFA. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, we will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

II. Existing AFAs Between Self-Governance Tribes and the Service

1. *Council of Athabaskan Tribal Governments.* The Council of Athabaskan Governments (CATG) has successfully implemented annual funding agreements (AFAs) since 2004 to perform activities in the Yukon Flats National Wildlife Refuge in Interior Alaska. The activities subject to the AFA have included marking boundaries for public easements, assisting with environmental education and outreach, monitoring wildlife harvest, surveying moose populations, and maintaining Federal property in and around Fort Yukon. Negotiations have resumed between the U.S. Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Nation regarding an Annual Funding Agreement for management at the National Bison Range Complex in Montana.

III. Eligible non-BIA Programs of the Service

Below is a listing of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either "otherwise available to Indians" under Title I, or may have "special geographic, historical, or cultural significance" to a participating tribe. The list represents the most current information on programs potentially available to tribes under a self-governance funding agreement. This list is not all-inclusive, but is representative of the types of Service programs that may be eligible for tribal participation through an AFA.

1. Subsistence Programs Within the State of Alaska

Evaluate and analyze data for annual subsistence regulatory cycles and other data trends related to subsistence harvest needs.

2. Technical Assistance, Restoration and Conservation

Conduct planning and implementation of population surveys, habitat surveys, restoration of sport fish, capture of depredating migratory birds, and habitat restoration activities.

3. Endangered Species Programs

Conduct activities associated with the conservation and recovery of threatened or endangered species protected under the Endangered Species Act (ESA) and candidate species under the ESA may be eligible for self-governance agreements. These activities may include, but are not limited to, cooperative conservation programs, development of recovery plans and implementation of recovery actions for threatened and endangered species, and implementation of status surveys for high priority candidate species.

4. Education Programs

Provide services in interpretation, outdoor classroom instruction, visitor center operations, and volunteer coordination both on and off National Wildlife Refuge lands in a variety of communities. Also assisting with environmental education and outreach efforts in local villages.

5. Environmental Contaminants Program

Conduct activities associated with identifying and removing toxic chemicals, which help prevent harm to fish, wildlife and their habitats. The activities required for environmental contaminant management may include, but are not limited to, analysis of

pollution data, removal of underground storage tanks, specific cleanup activities, and field data gathering efforts.

6. Wetland and Habitat Conservation and Restoration

Provide services for construction, planning, and habitat monitoring and activities associated with conservation and restoration of wetland habitat.

7. Fish Hatchery Operations

Conduct activities to recover aquatic species listed under the Endangered Species Act, restore native aquatic populations, and provide fish to benefit Tribes and National Wildlife Refuges. Activities that may be eligible for a self-governance agreement may include, but are not limited to: egg taking, rearing and feeding of fish, disease treatment, tagging, and clerical or facility maintenance at a fish hatchery.

8. National Wildlife Refuge Operations and Maintenance

Conduct activities to assist the National Wildlife Refuge System, a national network of lands and waters for conservation, management and restoration of fish, wildlife and plant resources and their habitats within the United States. Activities that may be eligible for a self-governance agreement may include, but are not limited to: construction, farming, concessions, maintenance, biological program efforts, habitat management, fire management, and implementation of comprehensive conservation planning.

We will also consider for inclusion in AFAs other programs or activities not listed above, but which, upon request of a self-governance tribe, we determine to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin such discussions.

Our mission is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Our primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. We also have a continuing cooperative relationship with a number of Indian tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance tribe may contact a national wildlife refuge or national fish hatchery directly concerning participation in our programs under the Act.

IV. Locations of Refuges and Hatcheries With Close Proximity to Self-Governance Tribes

We developed the list below based on the proximity of an identified self-governance tribe to Service facilities that have components that may be suitable for contracting through a self-governance agreement.

1. All Alaska National Wildlife Refuges, Alaska.
2. Alchey National Fish Hatchery, Arizona.
3. Humboldt Bay National Wildlife Refuge, Idaho.
4. Kootenai National Wildlife Refuge, Idaho.
5. Agassiz National Wildlife Refuge, Minnesota.
6. Mille Lacs National Wildlife Refuge, Minnesota.
7. Rice Lake National Wildlife Refuge, Minnesota.
8. National Bison Range, Montana.
9. Ninepipe National Wildlife Refuge, Montana.
10. Pablo National Wildlife Refuge, Montana.
11. Sequoyah National Wildlife Refuge, Oklahoma.
12. Tishomingo National Wildlife Refuge, Oklahoma.
13. Bandon Marsh National Wildlife Refuge, Washington.
14. Dungeness National Wildlife Refuge, Washington.
15. Makah National Fish Hatchery, Washington.
16. Nisqually National Wildlife Refuge, Washington.
17. Quinalt National Fish Hatchery, Washington.
18. San Juan Islands National Wildlife Refuge, Washington.

V. Programmatic Targets

During Fiscal Year 2008, upon request of a self-governance tribe, FWS will negotiate funding agreements for our eligible programs beyond those already negotiated.

Dated: February 27, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8-6180 Filed 3-25-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-320-1330-PE-24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004-0041

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an Information Collection Request (ICR) to OMB for review and approval. The ICR is scheduled to expire on March 31, 2008. The BLM may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, the BLM may continue to conduct or sponsor this information collection while it is pending at OMB. On May 8, 2007, the BLM published a notice in the **Federal Register** (72 FR 26149) requesting comment on this information collection. The comment period closed on July 9, 2007. The BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed in the **ADDRESSES** section below.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by April 25, 2008 to receive maximum consideration.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Alexandra Ritchie, Information Collection Clearance Officer, Bureau of Land Management, at U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., Washington, DC 20240. Additionally, you may contact Alexandra Ritchie regarding this ICR at (202) 452-0388 (phone); (202) 653-5287 (fax); or Alexandra_Ritchie@blm.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: For program-related questions, contact Ken Visser on (775) 861-6492 (Commercial or FTS). Persons who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact Mr. Visser. For questions regarding this ICR or the information collection process, contact Alexandra Ritchie by phone, mail, fax, or e-mail (see ADDRESSES).

SUPPLEMENTARY INFORMATION:
OMB Control Number: 1004-0041.
Title: Authorizing Grazing Use, 43 CFR 4110 and 4130.
 Bureau Form Number: 4130-1, 4130-1a, 4130-1b, 4130-3a, 4130-4 and 4130-5.
Type of Request: Extension of currently approved collection.

Affected Public: Private sector.
Respondent's Obligation: Required to obtain or retain a benefit.
Frequency of Collection: Annually or on occasion (applicants may request changes of grazing use within the terms and conditions of permits or leases at different times).

Activity	Number of annual respondents	Number of annual responses (X)	Completion time per response (hour fraction) (=)	Annual burden hours
43 CFR 4130.1-1 <i>Form 4130-1</i>	3,000	3,000	1/4	750
43 CFR 4110.1(d); 4110.2-1(c) <i>Form 4130-1a</i>	1,050	1,050	1/2	525
43 CFR 4110.1(a)-(d); 4130.7(d)-(f) <i>Form 4130-1b</i>	1,050	1,050	1/2	525
43 CFR 4110.1(d) and 4110.2-1(c) <i>Non-form requirements</i>	1,050	1,050	1/6	175
43 CFR 4130.4(a)-(b) <i>Form 4130-3a</i>	7,690	7,690	1/4	1,922.5
43 CFR 4130.6-1(a)-(b) <i>Form 4130-4</i>	10	10	1/4	2.5
43 CFR 4130.3-2(d) <i>Form 4130-5</i>	15,000	15,000	1/4	3,750
Totals	28,850	28,850	7,650

Application Processing Fee: The respondents incur a \$10 service charge for processing a grazing preference transfer, which includes submission, as a single package, of forms 4130-1,

4130-1a and 4130-1b. Respondents also incur a \$10 service charge that results in modifying or canceling and replacing a previously issued grazing fee billing. The form to be filed for that action is

4130-1. Based on these assumptions, the total annual cost to respondents would be:

Forms 4130-1, 4130-1a, 4130-1b filed as part of transfer application ..	1050 responses × \$10 = \$10,500
Form 4130-1 filed independent of a transfer application (3000 - 1050 = 1950 responses).	1950 responses × \$10 = \$19,500
	Total: \$30,000

The BLM grazing regulations were modified in 2006 to increase the service charge for transfers to \$145 and for canceling or replacing a previously issued grazing fee bill to \$50, among other things. However, the 2006 BLM rulemaking that changed these regulations were enjoined "in all respects" by the Idaho Federal District Court (for reasons other than the changes to the service charge schedule) in June, 2007. A final judgment by the Court affirming this injunction was entered on February 28, 2008, and it is now subject to appeal.

Abstract: The Taylor Grazing Act of 1934 (43 U.S.C. 315, 315a through 315r) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. *et seq.*) authorize the Bureau of Land Management (BLM) to administer the livestock grazing program consistent with land use plans, multiple use objectives, sustained yield, environmental values, economic considerations, and other factors. The BLM must maintain accurate records on:

- (1) Permittee and lessee qualifications for a grazing permit or lease;
- (2) Base property used in conjunction with public lands; and
- (3) The actual use made by livestock authorized to graze on the public lands.

The BLM also collects non-form information on grazing management from permittees and lessees.

Form 4130-1, Grazing Schedule

The BLM uses the information required on this form to adjudicate conflicting requests for grazing use, determine the legal qualifications of applicants, issue permits, and document transfers.

Form 4130-1a, Grazing Application—Preference Summary

The BLM uses the information required on this form to verify what the BLM needs to effectuate a grazing preference transfer.

Form 4130-1b, Grazing Application (Supplemental Information)

The BLM uses the information required on this form to certify an

applicant's qualifications for a grazing permit or lease and to provide other information necessary for the administration of the grazing permit or lease.

Form 4130-3a, Automated Grazing Application

The BLM uses the information required on this form to approve changes of grazing use within the terms and conditions of permits or leases.

Form 4130-4, Exchange of Use Grazing Agreement

The BLM uses the information required on this form to exchange grazing of livestock on private lands during certain periods.

Form 4130-5, Actual Grazing Use Report

The BLM uses the information required on this form to determine whether we need to adjust the amount of grazing use or if other management actions are needed. This form enables the BLM to calculate billings and to

monitor and evaluate livestock grazing use on the public lands.

Comments: We again specifically request your comments on the following:

(1) Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

(2) The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

(3) The quality, utility and clarity of the information we collect; and

(4) How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: March 20, 2008.

Alexandra Ritchie,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. E8-6104 Filed 3-25-08; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-140-1610-DT-009C]

Notice of Availability of the Record of Decision for the Resource Management Plan Amendment for Portions of the Roan Plateau Planning Area Designated as Areas of Critical Environmental Concern Public Lands in Garfield County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA), the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD), which documents the BLM's decision to designate and manage

four (4) Areas of Critical Environmental Concern (ACEC) within the Roan Plateau planning area. The Roan Plateau is located within Garfield and Rio Blanco Counties and within the jurisdiction of the Glenwood Springs Field Office in Colorado. The ROD announced today pertains only to approximately 21,034 acres of proposed ACEC and does not alter final decisions for the remaining approximately 52,568 acres within the Roan Plateau planning area, which were previously addressed in the Proposed Resource Management Plan Amendment/Final Environmental Impact Statement (PRMPA/FEIS) and Record of Decision announced in the **Federal Register**, Volume 72, Number 111, on Monday, June 11, 2007.

ADDRESSES: Copies of both RODs for the Roan Plateau planning area and the RMPA/FEIS are available upon request from the Glenwood Springs Field Office, Bureau of Land Management, 50629 Highways 6 and 24, Glenwood Springs, CO 81601, or via the Internet at <http://www.blm.gov/rmp/co/roanplateau>.

FOR FURTHER INFORMATION CONTACT: Jamie Connell, Field Manager, Bureau of Land Management Glenwood Springs Field Office, 50629 Highways 6 & 24, Glenwood Springs, CO 81601, or by telephone at (970) 947-2800.

SUPPLEMENTARY INFORMATION: The Roan Plateau RMPA was developed with broad public participation through a collaborative planning process. The ROD announced today addresses the management of approximately 21,034 acres of public land in the planning area proposed for designation as ACEC in the PRMPA/FEIS. Final RMPA decisions for the remaining portions of the planning area (approximately 52,568 acres) were addressed in a ROD announced in the **Federal Register**, Volume 72, Number 111, on Monday, June 11, 2007. The ROD announced today includes management actions to address the values of concern identified within the 21,034 acres of proposed ACEC. The ACECs designated in this ROD were previously analyzed in the Draft RMPA/Draft EIS (DRMPA/DEIS) and the PRMPA/FEIS. No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the PRMPA/FEIS. The Secretary of the Interior offered the State of Colorado an additional 120-day period in which to further understand the final RMPA decisions before approving this ROD. That period has elapsed, and the BLM has considered the State's recommendations in preparing the ROD for the ACEC portions of the Roan Plateau planning area.

The BLM accepted and considered input from the public on ACEC values and potential designation during scoping for the RMPA/EIS, during public comment on alternative development, during the comment period on the DRMPA/DEIS, and during a 60-day comment period on ACECs announced in the **Federal Register**, Volume 72, Number 111, on Monday, June 11, 2007. The alternatives analyzed in the DRMPA/DEIS varied in the number and size of potential ACECs. The BLM received over 500 separate comments addressing ACEC management during this 60-day public comment period. Comment summaries and BLM's responses to comments are available at the Glenwood Springs Field Office or on the Web at <http://www.blm.gov/rmp/co/roanplateau/index.htm>.

Input from the public and cooperating agencies was considered in developing the PRMPA/FEIS. Approval of the ROD constitutes formal designation of the proposed ACECs per 43 CFR 1610.7-2(b). The four designated ACECs and their associated relevant and important resource values are as follows: (1) Anvil Points (4,955 acres)—visual resources/aesthetics, wildlife habitat, botanical/ecological values; (2) Magpie Gulch (4,698 acres)—visual resources/aesthetics, wildlife habitat, botanical/ecological values; (3) East Fork Parachute Creek (6,571 acres)—visual resources/aesthetics, wildlife habitat, fisheries habitat, botanical-ecological values; and (4) Trapper/Northwater Creek (4,810 acres)—wildlife habitat, fisheries habitat, botanical/ecological values.

Under this ROD, surface disturbing activities will be limited to protect the relevant and important values within the designated ACECs. Such activities include oil and gas development, rights-of-way designation, and road construction. Limitations include no ground disturbance or no surface occupancy stipulations for activities within the ACECs, as well as site-specific relocation or controlled surface use stipulations. Further, conditions of approval or permitting level requirements may be applied to each drilling permit. Detailed discussions of the authorized protective measures for the designated ACECs are contained in the ROD and the PRMPA/FEIS.

Anna Marie Burden,

Acting State Director.

[FR Doc. E8-6105 Filed 3-25-08; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR**National Park Service****Notice of Extension of the Concession Contract for Bighorn Canyon National Recreation Area, MT**

AGENCY: National Park Service, Interior.
ACTION: Notice of proposal to extend the concession contract for the operation of the Ok-A-Beh Marina within Bighorn Canyon National Recreation Area, MT.

DATES: *Effective Date:* May 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513-7156.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the expiring concession contract for the operation of the Ok-A-Beh Marina within Bighorn Canyon National Recreation Area, Montana for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner. This action is necessary to avoid interruption of visitor services.

SUPPLEMENTARY INFORMATION:

Concession Contract CC-BICA007-05 expired by its term on December 31, 2007. The concessioner is LuCon Corporation operating within Bighorn Canyon National Recreation Area. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

This is not a request for proposals.

Dated: March 5, 2008.

Daniel N. Wenk,

Deputy Director, Operations, National Park Service.

[FR Doc. E8-5958 Filed 3-25-08; 8:45 am]

BILLING CODE 4312-53-M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1146-1147 (Preliminary)]

1-Hydroxyethylidene-1,1-Diphosphonic Acid (Hedp) From China and India

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations

and commencement of preliminary phase antidumping investigation Nos. 731-TA-1146-1147 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and India of 1-Hydroxyethylidene-1,1-diphosphonic acid (HEDP),¹ provided for in subheading 2931.00.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 5, 2008. The Commission's views are due at Commerce within five business days thereafter, or by May 12, 2008.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* March 19, 2008.

FOR FURTHER INFORMATION CONTACT:

Nathanael Comly (202-205-3174), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on March 19, 2008, by Compass Chemical International LLC, Huntsville, TX.

Participation in the investigations and public service list. Persons (other than

petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 9, 2008, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Nathanael Comly (202-205-3174) not later than April 7, 2008, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 14, 2008, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written

¹ HEDP is identified by CAS registry number 2809-21-4.

testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR. 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 20, 2008.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E8-6091 Filed 3-25-08; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1148 (Preliminary)]

Frontseating Service Valves from China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-1148 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material

injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of frontseating service valves, assembled or unassembled, complete or incomplete, and certain parts thereof, provided for in subheadings 8481.80.10, 8481.90.10, and possibly also imported under subheading 8415.90.80.85, of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 5, 2008. The Commission's views are due at Commerce within five business days thereafter, or by May 12, 2008.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* March 19, 2008.

FOR FURTHER INFORMATION CONTACT: Dana Lofgren (202-205-3185), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: *Background.* This investigation is being instituted in response to a petition filed on March 19, 2008, by Parker-Hannifin Corporation, Cleveland, OH.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under

investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on April 8, 2008 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Dana Lofgren (202-205-3185) not later than April 4, 2008, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 14, 2008, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic

means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 20, 2008.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E8-6092 Filed 3-25-08; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,373]

Mahle Industries, Inc., Including On-Site Leased Workers of Manpower, Inc., Holland, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and a Negative Determination Regarding Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative

Trade Adjustment Assistance on November 27, 2007, applicable to workers of Mahle Industries, Inc., Holland, Michigan. The notice was published in the **Federal Register** on December 11, 2007 (72 FR 70345).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive engine components for turbochargers.

The review of the investigation record shows that the Department inadvertently excluded from the certification on-site leased workers from Manpower, Inc.

Accordingly, the Department is amending this certification to include on-site leased workers from Manpower, Inc. The workers of Manpower, Inc. at the Holland, Michigan site are sufficiently under the control of Mahle Industries, Inc. to be considered leased workers.

The amended notice applicable to TA-W-62,373 is hereby issued as follows:

"All workers of Mahle Industries, Inc., including on-site leased workers of Manpower, Inc., Holland, Michigan, who became totally or partially separated from employment on or after October 24, 2006, through November 27, 2009, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974" and I further determine that all workers of Mahle Industries, Inc., including on-site leased workers of Manpower, Inc., Holland, Michigan are denied eligibility to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-6114 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 7, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 7, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of March 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 3/10/08 and 3/14/08]

TA-W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
62976	Erie Plastics (Comp)	Corry, PA	03/10/08	03/07/08
62977	Mold Masters Injectioneering, LLC (Comp)	Spartanburg, SC	03/10/08	03/08/08
62978	Gil-Mar Manufacturing (State)	Canton, MI	03/10/08	03/07/08
62979	Blackhawk Automotive Plastics, Inc. (Comp)	Mason, OH	03/10/08	03/07/08

APPENDIX—Continued

[TAA petitions instituted between 3/10/08 and 3/14/08]

TA-W	Subject firm Petitioners)	Location	Date of institu- tion	Date of peti- tion
62980	Pactiv Corporation Comp)	Yakima, WA	03/10/08	03/10/08
62981	Georgia Pacific (State)	Springhill, LA	03/11/08	02/14/08
62982	Employment Giant LLC (State)	Troy, MI	03/11/08	03/10/08
62983	Citation Grand Rapids, LLC (49331)	Lowell, MI	03/11/08	02/28/08
62984	Saint-Gobain Sekurit (Wkrs)	Shelby, MI	03/11/08	03/03/08
62985	Kone (IAMAW)	Coal Valley, IL	03/11/08	03/05/08
62986	Cabot Corporation (Comp)	Waverly, WV	03/11/08	03/07/08
62987	Mahle Clevite, Inc. (Comp)	Muskegon, MI	03/12/08	03/07/08
62988	A.O. Smith Electrical Products Co. (Comp)	Scottsville, KY	03/12/08	03/11/08
62989	Rexel, Inc. (State)	Denver, CO	03/12/08	03/05/08
62990	Airline Manufacturing Co., Inc. (Comp)	Columbus, MS	03/12/08	03/04/08
62991	Coe Newnes McGehee (Union)	Tigard, OR	03/12/08	03/11/08
62992	Rain Bird (Wkrs)	Tucson, AZ	03/12/08	03/06/08
62993	Burlington Homes (Wkrs)	Oxford, ME	03/12/08	03/11/08
62994	Essex Group, Inc. (USW)	Vincennes, IN	03/12/08	03/04/08
62995	RSDC of Michigan, LLC (Comp)	Holt, MI	03/12/08	03/11/08
62996	Vanity Fair Brands—New York Office (Comp)	New York, NY	03/12/08	03/10/08
62997	Bio-Rad Laboratories (Comp)	Waltham, MA	03/13/08	03/06/08
62998	C.H.P. Industries (State)	Charlotte, NC	03/13/08	03/07/08
62999	Quality Beachwear (State)	Compton, CA	03/13/08	03/12/08
63000	Chrysler Jefferson North Assembly Plant (UAW)	Detroit, MI	03/13/08	03/12/08
63001	Arr Maz Custom Chemicals (Comp)	Seabrook, SC	03/13/08	03/06/08
63002	Inventec Distribution (State)	Houston, TX	03/14/08	03/07/08
63003	Tietex Interiors (Comp)	Gibsonville, NC	03/14/08	03/06/08
63004	James Hardie Building Products (Wkrs)	Blandon, PA	03/14/08	03/06/08
63005	Eagle Ottawa (Comp)	Rochester Hills, MI	03/14/08	03/13/08

[FR Doc. E8-6111 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-62,878]

**Murata Power Solutions, Formerly
Known as C&D Technologies, Inc.,
Including On-Site Leased Workers
From Adecco, Volt, Employment
Hotline, Supplemental Solutions and
Employment Strategies, Tucson, AZ;
Amended Certification Regarding
Eligibility To Apply for Worker
Adjustment Assistance and Alternative
Trade Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 5, 2008, applicable to workers of Murata Power Solutions, formerly known as C&D Technologies, Inc., including on-site leased workers from Adecco, Volt, Employment Hotline, and Supplemental Solutions, Tucson, Arizona. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of printed circuit boards.

New information shows that leased workers of Employment Strategies were employed on-site at the Tucson, Arizona location of Murata Power Solutions, formerly known as C&D Technologies, Inc. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Employment Strategies working on-site at the Tucson, Arizona location of the subject firm.

The intent of the Department's certification is to include all workers employed at Murata Power Solutions, formerly known as C&D Technologies, Inc., Tucson, Arizona who were adversely affected by a shift in production of printed circuit boards to Mexico and China.

The amended notice applicable to TA-W-62,878 is hereby issued as follows:

All workers of Murata Power Solutions, formerly known as C&D Technologies, Inc., including on-site workers from Adecco, Volt, Employment Hotline, Supplemental Solutions and Employment Strategies, Tucson, Arizona, who became totally or

partially separated from employment on or after February 19, 2007, through March 5, 2010, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of March 2008.

Elliott S. Kushner,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E8-6118 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-62,748]

**Panasonic Primary Battery
Corporation of America, Including On-
Site Workers of Panasonic Battery
Corporation of America—Headquarters
Division, Columbus, GA; Amended
Certification Regarding Eligibility To
Apply for Worker Adjustment
Assistance and Alternative Trade
Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a

Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 5, 2008, applicable to workers of Panasonic Primary Battery Corporation of America, Columbus, Georgia. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of alkaline batteries—sizes AA, AAA, C, D, and 9-volt.

New information shows that worker separations have occurred involving employees of Panasonic Battery Corporation of America—Headquarters Division, employed on-site at the Columbus, Georgia location of Panasonic Primary Battery Corporation of America. Workers of the Headquarters Division provided various support function services for the Columbus, Georgia location of the subject firm.

Based on these findings, the Department is amending this certification to include all workers of Panasonic Battery Corporation of America—Headquarters Division working on-site at the Columbus, Georgia location of the subject firm.

The intent of the Department's certification is to include all workers employed at Panasonic Primary Battery Corporation of America, Columbus, Georgia who were adversely affected by a shift in production of alkaline batteries to Thailand.

The amended notice applicable to TA-W-62,748 is hereby issued as follows:

All workers of Panasonic Primary Battery Corporation of America, including on-site workers from Panasonic Battery Corporation of America—Headquarters Division, Columbus, Georgia, who became totally or partially separated from employment on or after January 25, 2007, through March 5, 2010, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of March 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-6117 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-61,492]

Woodward Controls, Inc., Solenoid Dept. 14520, Including On-Site Leased Workers From Adecco; Niles, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 4, 2007, applicable to workers of Woodward Controls, Inc., Solenoid Dept. 14520, Niles, Illinois. The notice was published in the **Federal Register** on June 22, 2007 (72 FR 34482).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of solenoids.

New information shows that leased workers of Adecco were employed on-site at the Niles, Illinois location of Woodward Controls, Inc., Solenoid Dept. 14520. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Adecco working on-site at the Niles, Illinois location of the subject firm.

The intent of the Department's certification is to include all workers employed at Woodward Controls, Inc., Solenoid Dept. 14520, Niles, Illinois, who were adversely affected by a shift in production of solenoids to Suzhou, China.

The amended notice applicable to TA-W-61,492 is hereby issued as follows:

"All workers of Woodward Controls, Inc., Solenoid Dept. 14520, including on-site leased workers from Adecco, Niles, Illinois, who became totally or partially separated from employment on or after May 9, 2006, through June 4, 2009, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC, this 20th day of March 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-6113 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of *March 10 through March 14, 2008*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,734; *Imerys Kaolin, Inc., Dry Branch, GA: December 24, 2007.*

TA-W-62,789; *Bollman Hat Company, Adamstown, Pa: January 31, 2007.*

TA-W-62,846; *Baldwin Piano, Inc., A Subsidiary of Gibson Guitar Corp., Trumann, AR: February 13, 2007.*

TA-W-62,913; *Berry Plastics Corporation, Formerly Covalence Plastics, Flexible Films Division, Leased Workers Optimist, Santa Fe Springs, CA: February 15, 2007.*

TA-W-62,923; *American Fiber and Finishing, Inc., Newberry, SC: March 29, 2008.*

TA-W-62,939; *Johnson Rubber Company, Leased Workers From*

Ryan Temps and Champion Staffing, North Baltimore, OH: March 1, 2007.

TA-W-62,939A; *Johnson Rubber Company, Leased Workers From Ryan Temps and Champion Staffing, Middlefield, OH: March 1, 2007.*

TA-W-62,940; *Two Star Dog, Inc., Berkeley, CA: February 5, 2007.*

TA-W-62,942; *Hi Specialty America, A Subsidiary of Hitachi Metals America, LTD, Irwin, PA: February 19, 2007.*

TA-W-62,954; *Fiesta Gas Grills, LLC, A Subsidiary of A.W. Minshall Holdings, Dickson, TN: February 22, 2007.*

TA-W-62,094; *Banner Fibreboard Company, Wellsburg, WV: August 30, 2006.*

TA-W-62,057; *Curt Bean Lumber Company, Amity, AR: August 27, 2006.*

TA-W-62,584; *General Dynamics OTS, Scranton Operations, Scranton, PA: December 14, 2006.*

TA-W-62,634; *Perras Lumber, Inc., Groveton, NH: January 3, 2007.*

TA-W-62,697; *Galey and Lord Industries, LLC, Flint Plant, Gastonia, NC: January 7, 2007.*

TA-W-62,697A; *Galey and Lord Industries, LLC, McDowell Plant, Marion, NC: January 7, 2007.*

TA-W-62,697B; *Galey and Lord Industries, LLC, Society Hill Plant, Society Hill, SC: January 7, 2007.*

TA-W-62,743; *Charleston Forge (Plant 1), A Subsidiary of Hearststone Enterprises, Inc., Boone, NC: December 2, 2007.*

TA-W-62,743A; *Charleston Forge (Plant 5), A Subsidiary of Hearststone Enterprises, Inc., Boone, NC: December 2, 2007.*

TA-W-62,743B; *Charleston Forge (Plant 7), A Subsidiary of Hearststone Enterprises, Inc., Boone, NC: January 24, 2007.*

TA-W-62,751; *Saco Lowell Parts, LLC, A Subsidiary of Hercules Engine Components, LLC, Easley, SC: January 11, 2007.*

TA-W-62,796; *Manosh-Hardwoods LLC, Sawmill, Morrisville, VT: January 23, 2007.*

TA-W-62,859; *Fraser Papers LTD., Gorham, NH: March 30, 2008.*

TA-W-62,793; *J.H.L. Fashion, Inc., New York, NY: January 31, 2007.*

TA-W-62,928; *SAS Pittsfield, Inc., Pittsfield, ME: February 15, 2007.*

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,775; *AS America, Inc.* (American Standard America), Tiffin, OH: January 30, 2007.

TA-W-62,784; *Kemet Electronics Corp., A Subsidiary of Kement Corp., Simpsonville Facility, Simpsonville, SC*: January 25, 2007.

TA-W-62,822; *Rock-Tenn Converting Company, Chicopee, MA*: February 11, 2007.

TA-W-62,829; *Minco Manufacturing, LLC, Colorado Springs, CO*: February 7, 2007.

TA-W-62,879; *ZF Sachs, Florence, KY*: February 20, 2007.

TA-W-62,907; *KX Technology LLC, A Subsidiary of Marmon Water LLC, Orange, CT*: January 26, 2007.

TA-W-62,937; *Fulflex Elastometrics Worldwide, A Subsidiary of The Moore Company, Fulflex of Tennessee, Greeneville, TN*: February 28, 2007.

TA-W-62,738; *Siemens Medical Solutions USA, Inc., Ultrasound Division, Division of Siemens Corp., Mountain View, CA*: March 17, 2008..

TA-W-62,854; *U.S. Security Associates, Inc., Working On-Site at Briggs and Stratton Corp., Rolla, MO*: January 25, 2007.

TA-W-62,865; *Isola USA Corporation—Fremont, Fremont, CA*: February 19, 2007.

TA-W-62,932; *Keeper Corporation, Leased Workers of AAA Staffing, North Windham, CT*: February 28, 2007.

TA-W-62,932A; *Keeper Corporation, Manchester, CT*: February 28, 2007.

TA-W-62,944; *Trius Products, LLC, Cleves, OH*: March 3, 2007.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,057A; *Curt Bean Lumber Company, Glenwood, AR*: August 27, 2006.

TA-W-62,648; *Trio Manufacturing Company, Forsyth, GA*: January 8, 2007.

TA-W-62,733; *Ravenna Aluminum, Inc., Ravenna, OH*: January 23, 2007.

TA-W-62,957; *Lear Operations Corp., Global Seating Systems Division, Louisville, KY*: February 28, 2007.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section

246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA-W-62,727; *KAM Plastics, Inc., Holland, MI*.

TA-W-62,779; *Visteon Corporation, Fuel Operations and Vidso Division, Concordia, MO*.

TA-W-62,904; *Prime Tanning Corporation, St. Joseph, MO*.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA-W-62,821; *Ameridrives International, LLC, Erie, PA*.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA-W-62,718; *Fraser Timber Limited, Ashland, ME*.

TA-W-62,731; *Lufkin Industries, Inc., Lufkin, TX*.

TA-W-62,805; *American Standard Building Systems, Martinsville, VA*.

TA-W-62,872; *Littelfuse, LP, Irving, TX*.
TA-W-62,661; *Agilent Technologies, Measurement Systems Division, Loveland, CO*.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-62,631; *Pfizer Global Manufacturing, Unit 4K643, Portage, MI*.

TA-W-62,827; *Peak Medical, Inc., Hillsborough, NC*.

TA-W-62,847; *Columbia University, Faculty Practice Department, Administration and Operations Group, New York, NY*.

TA-W-62,885; *Wingfoot Commercial Tire Systems, LLC, Corporate Office, Fort Smith, AR*.

TA-W-62,887; *TST Overland Express, A Division of Overland Western International, Flint, MI*.

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *March 10 through March 14, 2008*. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 20, 2008.

Linda G. Poole,

Certifying Officer, Division Of Trade Adjustment Assistance

[FR Doc. E8-6112 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,414]

Consistent Textile Industries, Dallas, NC; Notice of Negative Determination on Reconsideration

On November 29, 2007, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Consistent Textiles Industries, Dallas, North Carolina (the subject firm). The Department's Notice of affirmative determination was

published in the **Federal Register** on December 11, 2007 (72 FR 70344).

The initial determination was based on the Department's findings that the subject firm did not separate or threaten to separate a significant number or proportion of workers (at least three workers with a workforce of fewer than 50 workers, or five percent of the workers with a workforce of 50 or more, or 50 workers) as required by section 222 of the Trade Act of 1974.

The company-filed petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) alleges that the worker group works at a firm that has increased imports of like or directly competitive articles, has shifted production of the article to a foreign country, and has customers that have increased imports from another country.

In the request for reconsideration, a company official states that three workers were separated from the subject firm.

In order to apply for TAA, petitioners must meet the group eligibility requirements for directly-impacted workers under section 222(a) the Trade Act of 1974, as amended. The requirements can be satisfied in either one of two ways.

Under Section (a)(2)(A), the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision;

Under Section (a)(2)(B), the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the

articles is a party to a free trade agreement with the United States; or

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

During the reconsideration investigation, the Department confirmed that the subject firm separated three of its four workers. Accordingly, the Department determines that section (a)(2)(A)(A) and section (a)(2)(B)(A) were met.

A review of previously-submitted information confirmed that subject firm sales decreased in 2006 from 2005 levels, and decreased during January through October 2007 as compared to the corresponding period the prior year. Accordingly, the Department determines that section (a)(2)(A)(B) was met.

In order to determine that the subject workers meet the TAA group eligibility requirements, the Department must also find that either section (a)(2)(A)(C) was met or section (a)(2)(B)(B) and section (a)(2)(B)(C) were met.

The analysis of Section (a)(2)(A)(C) begins with identifying the "articles produced by such firm or subdivision," continues with a finding of "increased imports of articles like or directly competitive with articles produced by such firm," and concludes with the determination that increased imports "have contributed importantly" to the workers' separation or threat of separation and to the decline in subject firm sales or production.

The company-filed petition identified no article produced at the subject firm [Question—What (if any) articles are produced at subject firm? Answer—Just Sales, Question—If none are produced, what do workers do? Answer—Sales]. When the Department contacted the subject firm's major declining customer during the reconsideration investigation, the customer stated that it had no records of purchases of machine parts from the subject firm. Rather, all of the subject firm orders are for repair work on the customer's machines. Further, a company official stated that the machine parts produced were "used for replacement or repair" of textile machines.

The Department has consistently determined that repair work is a service and that items created incidental to

provision of a service are not articles for purposes of the Trade Act. As such, the Department determines that no article was produced by the subject firm, and that the subject workers cannot be considered import impacted or affected by a shift of production abroad, and cannot be certified as eligible to apply for worker adjustment assistance under the Trade Act.

Even if the subject firm does produce an article, for purposes of the Trade Act, the petitioning workers would not meet the group eligibility requirements for directly-impacted workers under section 222(a) the Trade Act of 1974, as amended.

The workers allege that they produce machine parts for textile machines. As such, a certification would be based on either a shift of production of machine parts to a foreign country or a determination that increased imports of articles like or directly competitive with the machine parts produced by the subject firm contributed importantly to workers' separation and declines in subject firm sales or production.

According to additional information obtained during the reconsideration investigation, the subject firm ceased machine part production in November 2007, did not shift production of machine parts to a foreign country, and did not increase its imports of machine parts like or directly competitive with those produced by workers at the subject firm.

Because there was no shift of production, as required by Section (a)(2)(B)(B), the petitioning workers can be certified eligible to apply for TAA only if the Department finds that there were "increased imports of articles like or directly competitive with articles produced by such firm," and that increased imports "have contributed importantly" to the workers' separations and to the decline in subject firm sales or production.

Since the subject firm did not increase its imports of machine parts or articles like or directly competitive with those produced by workers at the subject firm, the Department conducted a survey to determine whether the subject firm's major declining customers had increased their imports of machine parts or articles like or directly competitive with those produced by workers at the subject firm. None of the customers reported increased imports of articles like or directly competitive with the machine parts produced by workers at the subject firm.

Absent a finding of increased imports, the Department cannot determine that increased imports contributed importantly to the workers' separations.

Accordingly, the Department determines that section (a)(2)(A)(C) was not met.

Although the request for reconsideration did not allege that the subject workers were adversely affected as secondary workers (workers of a firm that supply component parts to a TAA-certified company or finished or assembled for a TAA-certified company), the Department expanded the reconsideration investigation to determine whether they would be eligible to apply for TAA on this basis. Such a certification, under section 223(b)(2), must be based in the certification of a primary firm.

The reconsideration investigation revealed that although several of the subject firm's customers are TAA-certified, the article produced by the subject workers (machine parts) are not a component part of the article produced by the workers eligible to apply for TAA (textiles). As such, the Department determines that section 223(b)(2) has not been met.

In order for the Department to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA), the subject worker group must be certified eligible to apply for Trade Adjustment Assistance (TAA). Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After careful review of the new and addition information obtained during the reconsideration investigation, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Consistent Textiles Industries, Dallas, North Carolina.

Signed at Washington, DC, this 18th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-6115 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,655]

Warp Processing Co., Inc., Exeter, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 14, 2008, several workers requested

administrative reconsideration of the Department's negative determination regarding the eligibility for workers and former workers of Warp Processing Co., Inc., Exeter, Pennsylvania (the subject firm) to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The negative determination was issued on February 19, 2008. The Department's Notice of negative determination was published in the **Federal Register** on March 7, 2008 (73 FR 12466). The subject workers are engaged in the activity of warping (placing onto beams) synthetic fibers made of nylon and polyester for the textile industry.

The TAA/ATAA petition was denied based on the Department's findings that the subject firm did not import warped synthetic fibers or shift production to a foreign country, and that the subject firm did not supply a component part to a manufacturing company with an existing primary TAA certification.

The workers stated in the request for reconsideration that the subject firm supplies "customers with warped synthetic fibers and then our customers weave it into fabric and material and produce the finished product" and "is secondarily affected." The workers further stated that "we know that the other countries are not importing them on beams but they are importing fabric and other finished product." The workers also alleged that Brawer Brothers is not the subject firm's only customer and that the subject firm's largest customer is Highland Industries.

Pursuant to 29 CFR 90.18(c), administrative reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

After careful review of the request for reconsideration, the support documentation, and previously submitted materials, the Department determines that there is no new information that supports a finding that section 222 of the Trade Act of 1974 was satisfied and that no mistake or misinterpretation of the facts or of the law with regards to the subject workers' eligibility to apply for TAA.

The initial investigation revealed that, during the relevant period, the subject

firm did not conduct business with Highland Industries and that the subject firm's only customer was Brawer Brothers. In addition to investigating whether the subject firm increased its imports of warped synthetic fabric, the Department had conducted a survey of not only Brawer Brothers but also its customers regarding their imports of articles like or directly competitive with the warped synthetic fabric produced by the subject workers. The surveys revealed no increased imports.

The three TAA-certified companies referenced in the request for reconsideration are Native Textiles, Inc. (TA-W-58,587 and TA-W-58,587A; certification expired February 15, 2008); Cortina Fabrics (TA-W-52,973; certification expired November 3, 2005); and Guilford Mills, Inc. (TA-W-39,921; certification expired May 15, 2004). Because the certifications for Cortina Fabrics and Guilford Mills, Inc. expired prior to the relevant period, facts which were the basis for the certification applicable to workers covered by that petition cannot be a basis for certification for workers covered by this petition.

Although the TAA certification for Native Textiles did not expire prior to the relevant period, it is irrelevant because the subject firm did not conduct business with that company during the relevant period and because warped synthetic fiber is not a component part of the warp knit synthetic tricot fabric produced by Native Textiles.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-6116 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-63,013]

A.O. Smith Electrical Products Company, Scottsville, KY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 17, 2008 in response to a worker petition filed by a company official on behalf of workers at A.O. Smith Electrical Products Company, Scottsville, Kentucky.

The petitioning group of workers is covered by an earlier petition (TA-W-62,988) filed on March 11, 2008 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 17th day of March 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-6110 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-62,919]

Penske Logistics, Elliston, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 28, 2008 in response to a worker petition filed by a state agency representative on behalf of workers of Penske Logistics, Elliston, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of March 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-6119 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****Susan Harwood Training Grant Program, FY 2008**

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Initial announcement of availability of funds and solicitation for grant applications (SGA).

Funding Opportunity No.: SHTG-FY-08-02.

Catalog of Federal Domestic Assistance No.: 17.502.

SUMMARY: The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to provide training and educational programs for employers and employees about safety and health topics selected by OSHA. Nonprofit organizations, including community-based and faith-based organizations, that are not an agency of a State or local government are eligible to apply. Additionally, State or local government-supported institutions of higher education are eligible to apply in accordance with 29 CFR part 95. This notice announces grant availability for Susan Harwood Training Program grants. All information and forms needed to apply for this funding opportunity are published as part of this SGA or are available on the Grants.gov site.

DATES: Grant applications must be received electronically by the Grants.gov system no later than 4:30 p.m., E.T., on Friday, May 23, 2008, the application deadline date.

ADDRESSES: Applications for grants submitted under this competition must be submitted electronically using the government-wide Grants.gov Apply site at <http://www.grants.gov>. If applying online poses a hardship to any applicant, the OSHA Directorate of Training and Education will provide assistance to ensure that applications are submitted online by the closing date. Applicants must contact the OSHA Directorate of Training and Education office listed on the announcement at least one week prior to the application deadline date, (or no later than 4:30 p.m., E.T., on May 16, 2008) to speak to a representative who can provide assistance to ensure that applications are submitted online by the closing date. Requests for extensions to this deadline will not be granted. Further information regarding submitting your grant application electronically is listed in

section IV, Item 3, Submission Date, Times, and Addresses.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this SGA should be directed to Cynthia Bencheck, Program Analyst, e-mail address: bencheck.cindy@dol.gov, tel: 847-297-4810 (note that this is not a toll-free number), or Jim Barnes, Director, Office of Training and Educational Programs, e-mail address barnes.jim@dol.gov, tel: 847-297-4810. To obtain further information on the Susan Harwood Training Grant Program of the U.S. Department of Labor, visit the OSHA Web site of the Occupational Safety and Health Administration at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:**I. Funding Opportunity Description***Overview of the Susan Harwood Training Grant Program*

The Susan Harwood Training Grant Program provides funds for programs to train employees and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes four areas:

- Educating employees and employers in small businesses. For purposes of this grant program, a small business is one with 250 or fewer employees.
- Training employees and employers about new OSHA standards.
- Training at-risk employee and employer populations.
- Training employees and employers about high risk activities or hazards identified by OSHA through the Department of Labor's Strategic Plan, or as part of an OSHA special emphasis program.

Grant Category Being Announced

Under this solicitation for grant applications, OSHA will accept applications for the Targeted Topic training grant category.

Topics for the Targeted Topic Training Category

Organizations funded for Targeted Topic training category grants are expected to develop and provide occupational safety and health training and/or educational programs addressing one of the topics selected by OSHA, recruit employees and employers for the training, and conduct and evaluate the training. Grantees are also expected to conduct follow-up evaluations with individuals trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training. If your organization plans to train

employees or employers in any of the 26 states operating OSHA-approved State Plans, State OSHA requirements for that state must be included in the training.

Eighteen different training topics were selected for this grant announcement. OSHA may award grants for some or all of the listed Targeted Topic training topics.

Applicants wishing to address more than one of the announced grant topics must submit a separate grant application for each topic. Each application must propose a plan for developing and conducting training programs addressing the recognition and prevention of safety and health hazards for one of the topics listed below.

Construction Industry Hazards.

Programs that train employees and employers in the recognition and prevention of safety and health hazards on one of the following topics.

- Falls from Scaffolds, Ladders and Roofs in Construction.
- Construction Focus Four hazards (training programs must include all four hazard areas—falls, electrocution, caught-in and struck-by.)

• Safety Hazards related to Mechanized, Over-the-Road and Heavy Construction Equipment, including Compactor Rollovers.

- Work Zone Safety.

General Industry Hazards.

Programs that train employees and employers in the recognition and prevention of safety and health hazards on one of the following topics.

- Combustible Dust.
- Ergonomics in Foundries.
- Foundry Contaminants Exposures.
- Electrical Safety including Arc Flash and Personal Protective Equipment (PPE) for Arc Flash.
- Falls in General Industry.
- Food Processing Health Hazards, including Diacetyl Exposures in Popcorn and Other Food Flavoring Facilities.

• Night Time Sanitation and Maintenance/Third Shift, including Lockout/Tagout and Confined Spaces.

• Emergency Preparedness and Response including Pandemic Flu Preparation.

• Safety and Health Management Systems for Small and Medium-Sized Businesses.

• Powered Industrial Trucks.

• Process Safety Management, including Chemical Plants, Ethanol Plants, Refineries and Anhydrous Ammonia.

• Slings and Materials Handling.

Other Safety And Health Topic Areas.

Programs that train employees and employers in the recognition and prevention of safety and health hazards on one of the following topics.

• Native American Tribal Safety and Health Issues.

• Safety and Health Hazards and Safety Plan Development in Shipbreaking.

II. Award Information

Targeted Topic training grants will be awarded for a 12-month period. The project period for these grants begins no later than September 30, 2008. There is approximately \$6.7 million available for this grant category. The average federal award will be approximately \$175,000.

III. Eligibility Information

1. Eligible Applicants

Nonprofit organizations, including community-based and faith-based organizations, that are not an agency of a State or local government are eligible to apply. Additionally, State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR part 95. Eligible organizations can apply independently for funding or in partnership with other eligible organizations, but in such a case, a lead organization must be identified. Subgrants are not authorized. Subcontracts, if any, must be awarded in accordance with 29 CFR 95.40–48, including OMB circulars requiring free and open competition for procurement transactions.

A 501(c)(4) nonprofit organization, as described in 26 U.S.C. 501(c)(4), that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant or loan. See 1 U.S.C. 1611.

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS).

2. Cost Sharing or Matching

Applicants are not required to contribute non-federal resources.

3. Other Eligibility Requirements

Legal Rules Pertaining to Inherently Religious Activities by Organizations that Receive Federal Financial Assistance.

The U. S. Government is generally prohibited from providing “direct” financial assistance for inherently religious activities.¹

¹ In this context, the term direct financial assistance means financial assistance that is provided directly by a government entity or an intermediate organization, as opposed to financial assistance that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term “direct”

The Grantee may be a faith-based organization or work with and partner with religious institutions; however, “direct” federal assistance provided under grants with the U. S. Department of Labor may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious practices. 29 CFR part 2, subpart D governs the treatment in Department of Labor government programs of religious organizations and religious activities; the Grantee and sub-contractors are expected to be aware of and observe the regulations in this subpart.

IV. Application and Submission Information

1. Application Package

All information and forms needed to apply for this funding opportunity are published as part of this SGA or are available on the Grants.gov site. For informational purposes, the complete **Federal Register** notice and application forms are also posted on the OSHA Susan Harwood Training Grant Program Web site at: <http://www.osha.gov/dcspp/ote/sharwood.html>.

2. Content and Form of Application Submission

Each grant application must address only one of the announced topics. Organizations interested in applying for grants for more than one of the announced grant topics must submit a separate application for each grant topic.

A. Required Contents

A complete application will contain the following mandatory forms, mandatory document attachments and optional attachments.

(1) Application for Federal Assistance form (SF 424). The individual signing the SF 424 form on behalf of the applicant must be authorized to bind the applicant.

Your organization is required to have a Data Universal Number System (DUNS) number from Dun and Bradstreet to complete this form. Information about “Obtaining a DUNS Number—A Guide for Federal Grant and Cooperative Agreement Applicants” is available at: <http://>

financial assistance may be used to refer to financial assistance that an organization receives directly from the Federal government (also know as “discretionary” assistance), as opposed to assistance that it receives from a State or Local government (also know as “indirect” or “block” grant assistance). The term “direct” has the former meaning throughout this solicitation for grant applications (SGA).

www.whitehouse.gov/omb/grants/duns_num_guide.pdf.

(2) Survey on Ensuring Equal Opportunity for Applicants (Faith-Based EEO Survey) form OMB No. 1890-0014.

(3) Program Summary (described further in subsection B below). The program summary is a short one-to-two page single-sided abstract that succinctly summarizes the proposed project and provides information about the applicant organization.

(4) Budget Information form (SF 424A).

(5) Detailed Project Budget Backup. The detailed budget backup will provide a detailed break out of the costs that are listed in section B of the SF 424A Budget Information form. If applicable: Provide a copy of approved indirect cost rate agreement and statement of program income.

(6) A description of any voluntary non-federal resource contribution to be provided by the applicant, including source of funds and estimated amount.

(7) Technical Proposal program narrative (described further in subsection B below), not to exceed 30 single-sided pages, double-spaced, 12-point font, containing: Problem Statement/Need for Funds; Administrative and Program Capability; and Work Plan.

(8) Assurances form (SF 424B).

(9) Combined Assurances form (ED 80-0013).

(10) Organizational Chart.

(11) Evidence of Non-Profit status, preferably from the Internal Revenue Service (IRS), if applicable. (Does not apply to State and local government-supported institutions of higher education.)

(12) Accounting System Certification, if applicable. Organizations that receive less than \$1 million annually in federal grants must attach a certification signed by your certifying official stating that your organization has a functioning accounting system that meets the criteria below. Your organization may also designate a qualified entity (include the name and address in the documentation) to maintain a functioning accounting system that meets the criteria below. The certification should attest that your organization's accounting system provides for the following:

(a) Accurate, current and complete disclosure of the financial results of each federally sponsored project.

(b) Records that identify adequately the source and application of funds for federally sponsored activities.

(c) Effective control over and accountability for all funds, property and other assets.

(d) Comparison of outlays with budget amounts.

(e) Written procedures to minimize the time elapsing between the transfer of funds.

(f) Written procedures for determining the reasonableness, allocability and allowability of costs.

(g) Accounting records, including cost accounting records that are supported by source documentation.

(13) Any attachments such as resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project.

To be considered responsive to this solicitation, the application must consist of the above mentioned separate parts. Major sections and sub-sections of the application should be divided and clearly identified, and all pages shall be numbered. Standard forms, attachments, exhibits and the Program Summary abstract are not counted toward the page limit.

The forms listed above are available through the Grants.gov site and must be submitted electronically as a part of your grant application. In the Grants.gov system, there is a window containing a menu of "Mandatory Documents" which must be completed and submitted online within the system. For all other attachments such as the Program Summary, Detailed Budget Backup, Technical Proposal, etc., please scan these documents into a single Adobe Acrobat file and attach the document in the area for attachments.

B. Budget Information

Applicants must include the following required grant project budget information.

(1) Budget Information form (SF 424A).

(2) A Detailed Project Budget that clearly details the costs of performing all of the requirements presented in this solicitation. The detailed budget will break out the costs that are listed in Section B of the SF 424A Budget Information form. Applicants are asked to plan for a funding level based on funds needed to perform work plan and administrative activities for the grant year.

Applicants are reminded to budget for compliance with the administrative requirements set forth. (Copies of all regulations that are referenced in this solicitation for grant applications (SGA) are available online at no cost at:

<http://www.osha.gov/dcsp/ote/sharwood.html>). This includes the costs of performing activities such as travel for two staff members, one program and one financial, to the Chicago area to

attend a new grantee orientation meeting; financial audit, if required; project closeout; document preparation (e.g., quarterly progress reports, project documents); and ensuring compliance with procurement and property standards.

The Detailed Project Budget should break out administrative costs separately from programmatic costs for both federal and non-federal funds. Administrative costs include indirect costs from the costs pool and the cost of activities, materials, meeting close-out requirements as described in section VI, and personnel (e.g., administrative assistants) who support the management and administration of the project but do not provide direct services to project beneficiaries. Indirect cost charges, which are considered administrative costs, must be supported with a copy of an approved Indirect Cost Rate Agreement form. Administrative costs cannot exceed 25% of the total grant budget. The project budget should clearly demonstrate that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the applicant in its proposal, and must comply with federal cost principles (which can be found in the applicable OMB Circulars).

(3) A description of any voluntary non-federal resource contribution to be provided by the applicant, including source of funds and estimated amount.

C. Program Summary and Technical Proposal

The Program Summary and the Technical Proposal will contain the narrative segments of the application. The Program Summary abstract is not to exceed two single-sided pages. The Technical Proposal program narrative section is not to exceed 30 single-sided (8½" x 11" or A4), double-spaced, 12-point font, typed pages, consisting of the Problem Statement/Need for Funds, Administrative and Program Capability, and Work Plan. Reviewers will only consider Technical Proposal information up to the 30-page limit. The Technical Proposal must demonstrate the capability to successfully administer the grant and to meet the objectives of this solicitation. The Technical Proposal will be rated in accordance with the selection criteria specified in section V.

The Program Summary and Technical Proposal must include the following sections.

(1) *Program Summary*. An abstract of the application, not to exceed two single-sided pages, that must include the following information.

- Applicant organization's full legal name.
 - Project Director's name, title, street address, and mailing address if it is different from the street address, telephone and fax numbers, and e-mail address. The Project Director is the person who will be responsible for the day-to-day operation and administration of the program. The Project Director's name should also be the same name you list on the Application for Federal Assistance form (SF-424) in section f. Name and contact information of person to be contacted on matters involving this application.
 - Authorized Representative/Certifying Representative's name, title, street address, and mailing address if it is different from the street address, telephone and fax numbers, and e-mail address. The Authorized Representative/Certifying Representative is the official in your organization who is authorized to enter into grant agreements. The Authorized Representative/Certifying Representative's name should also be the same name you list on the Application for Federal Assistance form (SF-424) in section 21 for Authorized Representative.
 - If someone other than the Authorized Representative/Certifying Representative described above will be authorized by your organization to submit and sign off on quarterly financial reports (SF 269 forms) for OSHA, provide their name, title, street address, and mailing address if it is different from the street address, telephone and fax numbers, and e-mail address.
 - *Funding requested.* List how much federal funding you are requesting. If your organization is contributing non-federal resources, also list the amount of non-federal resources and the source of those funds.
 - *Grant Topic.* List the grant topic and industry or subject area your organization has selected to target in its application.
 - *Summary of the Proposed Project.* Write a brief program summary of your proposed grant project.
 - *Applicant Background.* Describe your applicant organization, including its mission, identify the type of non-profit organization it is, and provide a description of your membership, if any.
- (2) The Technical Proposal program narrative segment, which is not to exceed 30 single-sided, double-spaced, 12-point font pages in length, must address each section listed below.
- *Problem Statement/Need for Funds.* Describe the hazards that will be addressed in your program, the target

population(s) that will benefit from your training and educational program, and the barriers that have prevented this population from receiving adequate training. When you discuss target populations, include geographic location(s), and the number of employees and employers.

- *Administrative and Program Capability.* Briefly describe your organization's functions and activities. Relate this description of functions to your organizational chart that you will include in the application. If your organization is conducting, or has conducted within the last five years, any other government (Federal, State, or local) grant programs, the application must include an attachment (which will not count towards the page limit) providing information regarding previous grants including a) the organization for which the work was done, and b) the dollar value of the grant. If your organization has not had previous grant experience, you may partner with an organization that has grant experience to manage the grant. If you use this approach, the management organization must be identified and its grant program experience discussed.

- *Program Experience.* Describe your organization's experience conducting the type of program that you are proposing. Include program specifics such as program titles, numbers trained and duration of training. Experience includes safety and health experience, training experience with adults, and programs operated specifically for the selected target population(s). Nonprofit organizations, including community-based and faith-based organizations, that do not have prior experience in safety and health may partner with an established safety and health organization to acquire safety and health expertise.

- *Staff Experience.* Describe the qualifications of the professional staff you will assign to the program. Include resumes of staff already on board. If some positions are vacant, include position descriptions/minimum hiring qualifications instead of resumes. Qualified staff are those with safety and health experience, training experience, or experience working with the target population.

- *Work Plan.* Develop a 12-month work plan that is broken out by quarters. An outline of specific items required in your work plan follows.

- *Work Plan Overview.* Describe your plan for grant activities and the anticipated outcomes. The overall plan will describe such things as the development of training materials, the training content, recruiting of trainees,

where or how training will take place, and the anticipated benefits to employees and employers receiving the training.

- *Work Plan Activities.* Break your overall plan down into activities or tasks. For each activity, explain what will be done, who will do it, when it will be done, and the results of the activity. When you discuss training, include the subjects to be taught, the length of the training sessions, and training location (classroom, worksites). Describe how you will recruit trainees for the training.

- *Work Plan Quarterly Projections.* For training and other quantifiable activities, estimate how many (e.g., number of advisory committee meetings, classes to be conducted, employees and employers to be trained, etc.) you will accomplish each quarter of the grant (grant quarters match calendar quarters, i.e., January to March, April to June) and provide the training number totals for the grant. Quarterly projections are used to measure your actual performance against your plans. If you plan to conduct a train-the-trainer program, estimate the number of individuals you expect to be trained during the grant period by those who received the train-the-trainer training. These second tier training numbers should only be included if your organization is planning to follow up with the trainers to obtain this data during the grant period.

- *Materials.* Describe each educational material you will produce under the grant, if not treated as a separate activity under Activities above. Provide a timetable for developing and producing the material. OSHA must review and approve training materials for technical accuracy and suitability of content before the materials may be used in your grant program. Therefore, your timetable must include provisions for an OSHA review of draft and camera-ready products. Acceptable formats for training materials include Microsoft Office 2003 and Adobe Reader version 7. For Targeted Topic training grants, any previously developed training materials you are proposing to utilize in your grant training must also go through an OSHA review before being used.

- *Evaluations.* There are three types of evaluations that should be conducted. First, describe plans to evaluate the training sessions. Second, describe your plans to evaluate your progress in accomplishing the grant work activities listed in your application. This includes comparing planned vs. actual accomplishments. Discuss who is responsible for taking corrective action

if plans are not being met. Third, describe your plans to assess the effectiveness of the training your organization is conducting. This will involve following-up, by survey or on-site review, if feasible, with individuals who attended the training to find out what changes were made to abate hazards in their workplaces. Include timetables for follow-up and for submitting a summary of the assessment results to OSHA.

(3) An organizational chart of the staff that will be working on this grant and their location within the applicant organization.

Attachments: Summaries of other relevant organizational experiences; information on prior government grants; résumés of key personnel and/or position descriptions; and signed letters of commitment to the project.

Acceptable formats for document attachments submitted as a part of a Grants.gov grant application include Microsoft Office 2003 and Adobe Reader version 7.

3. Submission Date, Times, and Addresses

Date: The deadline date for receipt of applications is Friday, May 23, 2008. Applications must be received by 4:30 p.m., E.T., on the closing date at: <http://www.grants.gov>. Any application received after the deadline will not be accepted.

Electronic Submission of Applications: Applications for Susan Harwood grants under this competition must be submitted electronically using the government-wide Grants.gov Apply site at: <http://www.grants.gov>. Through this site you will be able to download a copy of the application package, complete it offline, and then upload and submit your full application. Acceptable formats for document attachments submitted as a part of a Grants.gov grant application include Microsoft Office 2003 and Adobe Reader version 7. In the Grants.gov system, there is a window containing a menu of "Mandatory Documents" which must be completed and submitted online within the system. For all other attachments such as the Program Summary, Detailed Budget Backup, Technical Proposal, etc., please scan these documents into a single Adobe Acrobat file and attach the document in the area for attachments. Applications sent by mail or other delivery services, e-mail, telegram, or facsimile (FAX) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored.

For applicants using Grants.gov for the first time, it is strongly

recommended that they immediately initiate and complete the "Get Registered" steps to register with Grants.gov, at: http://www.grants.gov/applicants/get_registered.jsp. These steps will probably take multiple days to complete, which should be factored into an applicant's plans for electronic application submission in order to avoid unexpected delays that could result in the rejection of the application.

If you have questions regarding the process for submitting your application through Grants.gov, or are experiencing problems with electronic submissions, you may contact the Grants Program Management Office via one of the methods below:

- E-mail at: support@grants.gov.
- Telephone the Grants.gov Contact

Center Phone: 1-800-518-4726. The Contact Center hours of operation are Monday-Friday, 7 a.m. to 9 p.m., Eastern Time; closed on Federal holidays.

- When contacting the Grants Program Management Office, the following information will help expedite your inquiry.

- Funding Opportunity Number (FON).
- Name of Agency You Are Applying To.
- Specific Area of Concern.

If applying online poses a hardship to any applicant, the OSHA Directorate of Training and Education will provide assistance to ensure that applications are submitted online by the closing date. Applicants must contact the OSHA Directorate of Training and Education office listed on the announcement at least one week prior to the application deadline date (or not later than 4:30 p.m., E.T., on May 16, 2008) to speak to a representative who can provide assistance to ensure that applications are submitted online by the closing date. Requests for extensions to this application deadline will not be granted.

4. Intergovernmental Review

The Harwood Training Grant Program is not subject to Executive Order 12372 Intergovernmental Review of Federal Programs.

5. Funding Restrictions

Grant funds may be spent on the following:

- (a) Conducting training.
- (b) Conducting other activities that reach and inform employees and employers about workplace occupational safety and health hazards and hazard abatement.
- (c) Conducting outreach and recruiting activities to increase the

number of employees and employers participating in the program.

(d) Developing educational materials for use in training.

Grant funds may not be used for the following activities under the terms of the grant program.

(e) Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

(f) Training individuals not covered by the Occupational Safety and Health Act.

(g) Training employees or employers from workplaces not covered by the Occupational Safety and Health Act. Examples include: State and local government employees in non-State Plan States, and employees referenced in section 4 (b)(1) of the Act.

(h) Training on topics that do not cover the recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples of allowable topics include: Workers' compensation, first aid, and publication of materials prejudicial to labor or management.

(i) Assisting employees in arbitration cases or other actions against employers, or assisting employers and employees in the prosecution of claims against federal, State or local governments.

(j) Duplicating services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 21(d) of the Occupational Safety and Health Act.

(k) Generating membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

(l) The cost of lost-time wages paid by you or other organizations to students while attending grant-funded training.

(m) Administrative costs cannot exceed 25% of the total grant budget.

While the activities described above may be part of an organization's regular programs, the costs of these activities cannot be paid for by grant funds, whether the funds are from non-federal matching resources or from the federally funded portion of the grant.

Determinations of allowable costs will be made in accordance with the applicable federal cost principles, e.g., Nonprofit Organizations—2 CFR part 230, formerly OMB Circular A-122; Educational Institutions—2 CFR part 220, formerly OMB Circular A-21. Disallowed costs are those charges to a grant that the grantor agency or its representative determines to not be

allowed in accordance with the applicable federal cost principles or other conditions contained in the grant.

No applicant at any time will be entitled to reimbursement of pre-award costs.

V. Application Review Information

Grant applications will be reviewed by technical panels comprised of OSHA staff. The results of the grant reviews will be presented to the Assistant Secretary of OSHA, who will make the selection of organizations to be awarded grants. OSHA may award grants for some or all of the listed topic areas. It is anticipated that the grant awards will be announced no later than September 2008.

1. Evaluation Criteria

The technical panels will review grant applications against the criteria listed below on the basis of 100 maximum points. Targeted Topic training grant category applications will be reviewed and rated as follows.

A. Technical Approach, Program Design—50 points total

Program Design

(1) The proposed training and education program must address the recognition and prevention of safety and health hazards for one of the Targeted Topic subject areas identified in Section I of this SGA. (1 point)

(2) The proposal plans to train employees and/or employers, clearly estimates the numbers to be trained, and clearly identifies the types of employees and employers to be trained. The training will reach employees and employers from multiple employers. (4 points)

(3) If the proposal contains a train-the-trainer program, the following information must be provided. (4 points)

- What ongoing support the grantee will provide to new trainers;
- The number of individuals to be trained as trainers;
- The estimated number of courses to be conducted by the new trainers;
- The estimated number of students to be trained by these new trainers; and
- A description of how the grantee will obtain data from the new trainers documenting their classes and student numbers.

(4) There is a well-developed work plan, and activities and training are adequately described. The planned activities and training are appropriately tailored to the needs and levels of the employees and employers to be trained. The target audience to be served through the grant program is described. (20 points)

(5) The training materials and training programs are tailored to the training needs of one or more of the following target audiences; and the need for training is established: Small businesses; new businesses; limited English proficiency, non-literate and low literacy workers; youth; immigrant and minority workers, and other hard-to-reach workers; and employees in high-hazard industries and industries with high fatality rates. Organizations proposing to develop Spanish-language training materials should utilize the OSHA Dictionaries (English-to-Spanish and Spanish-to-English) for terminology. The dictionaries are available on the OSHA Web site at: http://www.osha.gov/dcsp/compliance_assistance/spanish_dictionaries.html.

Organizations proposing to develop materials in languages other than English will also be required to provide an English version of the materials. (10 points)

(6) There is a sound plan to recruit trainees for the program. (4 points)

(7) If the proposal includes developing educational materials for use in the training program, there is a plan for OSHA to review the educational materials for technical accuracy and suitability of content during development. If previously-developed training products will be used for the Targeted Topic training program, applicants have a plan for OSHA to review the materials before using the products in their grant program. (1 point)

(8) There are plans for three different types of evaluation. The plans include evaluating your organization's progress in accomplishing the grant work activities and accomplishments, evaluating your training sessions, and evaluating the program's effectiveness and impact to determine if the safety and health training and services provided resulted in workplace change. This includes a description of the evaluation plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries. (5 points)

(9) The application is complete, including forms, budget detail, narrative and work plan, and required attachments. (1 point)

B. Budget—20 points total

(1) The budgeted costs are reasonable. No more than 25% of the total budget is for administration. (12 points)

(2) The budget complies with federal cost principles (which can be found in the applicable OMB Circulars) and with OSHA budget requirements contained

in the grant application instructions. (3 points)

(3) The cost per trainee is less than \$500 and the cost per training hour is reasonable. (5 points)

C. Experience of Organization—15 points total

(1) The organization applying for the grant demonstrates experience with occupational safety and health. Applicants that do not have prior experience in providing safety and health training to employees or employers may partner with an established safety and health organization to acquire safety and health expertise. (4 points)

(2) The organization applying for the grant demonstrates experience training adults in work-related subjects or in recruiting, training and working with the target audience for this grant. (4 points)

(3) The application organization demonstrates that the applicant has strong financial management and internal control systems. (4 points)

(4) The applicant organization has administered, or will work with an organization that has administered, a number of different federal and/or State grants over the past five years. (3 points)

D. Experience and Qualification of Personnel—15 points total

(1) The staff to be assigned to the project has experience in occupational safety and health, the specific topic chosen, and in training adults. (10 points)

(2) Project staff has experience in recruiting, training, and working with the population your organization proposes to serve under the grant. (5 points)

2. Review and Selection Process

OSHA will screen all applications to determine whether all required proposal elements are present and clearly identifiable. Applications that do not may be deemed non-responsive and may not be evaluated. A technical panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Assistant Secretary are advisory in nature. The Assistant Secretary may establish a minimally acceptable rating range for the purpose of selecting qualified applicants. The Assistant Secretary will make a final selection determination based on what is most advantageous to the government, considering factors such as panel findings, geographic presence of the applicants, Agency priorities, the best value to the

government, cost, and other factors. The Assistant Secretary's determination for award under this solicitation for grant applications (SGA) is final.

3. Anticipated Announcement and Award Dates

Announcement of these awards is expected to occur no later than September 30, 2008.

The grant agreements will be awarded by no later than September 2008.

VI. Award Administration Information

1. Award Process

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter into negotiations concerning such items as program components, staffing and funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Note: Except as specifically provided, OSHA's acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement or procedures. For example, if an application identifies a specific sub-contractor to provide services, the USDOL OSHA award does not provide the justification or basis to sole-source the procurement, i.e., to avoid competition.

2. Administrative and National Policy Requirements

All grantees, including faith-based organizations, will be subject to applicable federal laws and regulations (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. The grant award(s) awarded under this SGA will be subject to the following administrative standards and provisions, as applicable to the particular grantee:

29 CFR part 2, subpart D, new equal treatment regulations.

29 CFR parts 31, 32, 35 and 36 as applicable.

29 CFR part 93, new restrictions on lobbying.

29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department

of Labor regulations implementing 29 CFR part 215, formerly OMB Circular A-110.

29 CFR part 98, government-wide debarment and suspension (nonprocurement) and government wide requirements for drug-free workplace (grants).

29 CFR part 220, formerly OMB Circular A-21, which describes allowable and unallowable costs for educational institutions.

29 CFR part 230, formerly OMB circular A-122, which describes allowable and unallowable costs for other nonprofit organizations.

OMB Circular A-133, 29 CFR parts 96 and 99, which provide information about audit requirements.

Certifications. All applicants are required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

Training Audience. Grant-funded training programs must serve multiple employers and their employees. Grant-funded training programs must serve individuals covered by the Occupational Safety and Health Act of 1970. As a part of the grant close-out process, grantees must self-certify that their grant-funded programs and materials were not provided to ineligible audiences.

Other. In keeping with the policies outlined in Executive Orders 13256, 12928, 13230, and 13021 as amended, the grantee is strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities.

3. Special Program Requirements

OSHA review of educational materials. OSHA will review all educational materials produced by the grantee for technical accuracy and suitability of content during development and before final publication. OSHA will also review previously-developed training curricula and purchased training materials for technical accuracy and suitability of content before the materials are used. Grantees developing training materials must follow all copyright laws and provide written certification that their materials are free from copyright infringements.

When grant recipients produce training materials, they must provide copies of completed materials to OSHA

before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Audiovisual materials produced by the grantee as a part of its grant program may be included in this lending program. In addition, all materials produced by grantees must be provided to OSHA in hard copy as well as in a digital format (CD Rom/DVD) for possible publication on the Internet by OSHA. Two copies of the materials must be provided to OSHA. Acceptable formats for training materials include Microsoft Office 2003 and Adobe Reader version 7.

As stated in 29 CFR 95.36, the Department of Labor reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use for federal purposes any work produced under a grant, and to authorize others to do so. Applicants should note that grantees must agree to provide the Department of Labor a paid-up, nonexclusive and irrevocable license to reproduce, publish, or otherwise use for federal purposes all products developed, or for which ownership was purchased, under an award including, but not limited to, curricula, training models, technical assistance products, and any related materials, and to authorize the Department of Labor to do so. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronic or otherwise.

Acknowledgment of USDOL Funding. In all circumstances, all approved grant-funded materials developed by a grantee shall contain the following disclaimer:

This material was produced under grant number _____ from the Occupational Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

Public reference to grant: When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, all grantees receiving Federal funds must clearly state:

- The percentage of the total costs of the program or project that will be financed with federal money;
- The dollar amount of federal financial assistance for the project or program; and
- The percentage and dollar amount of the total costs of the project or

program that will be financed by non-governmental sources.

Use of U.S. Department of Labor (USDOL) OSHA Logo: The USDOL-OSHA logo may not be applied to any grant products developed with grant funds without advance written authority from OSHA.

4. Reporting

Grantees are required by Departmental regulations to submit program and financial reports each calendar quarter. All reports are due no later than 30 days after the end of the fiscal quarter and shall be submitted to the appropriate OSHA Regional Office.

The Grantee(s) shall submit financial reports on a quarterly basis. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed. Financial reports are due within 30 days of the end of the reporting period (i.e., by January 30, April 30, July 30, and October 30).

The Grantee(s) shall use Standard Form (SF) 269, Financial Status Report, to report the status of funds, at the project level, during the grant period. A final SF269 shall be submitted no later than 90 days following completion of the grant period. The SF269 reports will be submitted electronically through the Department of Labor (DOL) E-Grants system.

Grantees will use the U.S. Department of Health and Human Services Payment Management System (HHS PMS) to receive federal funds and to report federal expenditures, and must also send USDOL copies of the PSC 272 that it submits to HHS, on the same schedule.

Technical Progress Reports: After signing the agreement, the Grantee(s) shall submit technical progress reports to USDOL/OSHA Regional Offices at the end of each fiscal quarter. Technical progress reports provide both quantitative and qualitative information and a narrative assessment of performance for the preceding three-month period. OSHA Form 171 shall be used for reporting training numbers and a narrative report shall be provided that details grant activities conducted during the quarter, information on how the project is progressing in achieving its stated objectives, and notes any problems or delays along with corrective actions proposed. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed. Quarterly progress reports are due within 30 days of the end of the report

period (i.e., by January 30, April 30, July 30, and October 30). Between reporting dates, the Grantees(s) shall also immediately inform USDOL/OSHA of significant developments and/or problems affecting the organization's ability to accomplish work.

Authority: The Occupational Safety and Health Act of 1970, (29 U.S.C. 670), Public Law 110-161, and the Consolidated Appropriations Act, 2008.

Signed at Washington, DC, this 21st day of March, 2008.

Edwin G. Foulke, Jr.

Assistant Secretary of Labor for Occupational Safety and Health.

Application Document Checklist

Application for Federal Assistance (SF 424 form).

Budget Information (SF 424A form).

Assurances (SF 424B form).

Combined Assurances for (ED 80-0013 form).

Survey on Ensuring Equal Opportunity for Applicants (Faith-Based EEO Survey), (OMB No. 1890-0014 form).

Attachments (Please Attach in the Following Order)

Program Summary (not to exceed two single-sided pages).

Detailed Project Budget Backup.

If applicable: provide a copy of approved indirect cost rate agreement, statement of program income, and a description of any voluntary non-federal resource contribution to be provided by the applicant, including source of funds and estimated amount.

Technical Proposal, program narrative, not to exceed 30 single-sided pages, double-spaced, 12-point font, containing:

Problem Statement/Need for Funds;

Administrative and Program Capability; and

Work plan.

Organizational Chart

Evidence of Nonprofit status, (letter from the IRS) if applicable

Accounting System Certification, if applicable

Other Attachments such as: Resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project.

Note: In the Grants.gov system, there is a window containing a menu of "Mandatory Documents" which must be completed and submitted online within the system. For all other attachments such as the Program Summary, Detailed Budget Backup, Technical Proposal, etc., please scan these documents into a single Adobe Acrobat file

and attach the document in the area for attachments.

[FR Doc. E8-6108 Filed 3-25-08; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL COUNCIL ON DISABILITY (NCD)

Sunshine Act Meetings

TYPE: Quarterly Meeting.

DATES AND TIMES: April 21, 2008, 8:30 a.m.-5:30 p.m.

April 22, 2008, 8:30 a.m.-5 p.m.

April 23, 2008, 8:30 a.m.-12:30 p.m.

LOCATION: The Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA.

STATUS: April 21, 2008, 8:30 a.m.-5:30 p.m.—Open.

April 21, 2008, 5:30 p.m.-6 p.m.—Closed Executive Session.

April 22, 2008, 8:30 a.m.-5 p.m.—Open.

April 23, 2008, 8:30 a.m.-12:30 p.m.—Open.

AGENDA: Updates on: Healthcare; Veterans' Issues; Civil Rights; Emerging Trends; Employment; Public Comment Sessions; Emergency Preparedness; Reports from the Chairperson, Council Members, and the Executive Director; Unfinished Business; New Business; Announcements; Adjournment.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of External Affairs, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202-272-2004 (voice), 202-272-2074 (TTY), 202-272-2022 (fax).

AGENCY MISSION: NCD is an independent federal agency and is composed of 15 members appointed by the President, by and with the advice and consent of the Senate. NCD provides advice to the President, Congress, and executive branch agencies promoting policies, programs, practices, and procedures that (A) guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and (B) to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD immediately.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services

for these meetings should notify NCD immediately.

Dated: March 19, 2008.

Michael C. Collins,

Executive Director.

[FR Doc. 08-1078 Filed 3-24-08; 12:10 pm]

BILLING CODE 6820-MA-P

NATIONAL SCIENCE FOUNDATION

Notice of Withdrawal of Request for Public Comment on a Draft Programmatic Environmental Assessment

AGENCY: National Science Foundation.

ACTION: Notice of withdrawal of request for public comment on a Draft Programmatic Environmental Assessment (PEA) for the Ocean Observatories Initiative (OOI), originally published in the **Federal Register**: March 19, 2008 (Volume 73, Number 54), page 14847.

SUMMARY: The National Science Foundation (NSF) withdraws the notice of the request for public comment on a Draft PEA for the OOI. The notice was erroneously published (**Federal Register**: March 19, 2008 [Volume 73, Number 54], page 14847) prior to the release of the Draft PEA.

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Dr. Shelby Walker, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292-8580.

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF) withdraws the notice of the request for public comment on a Draft PEA for the OOI. The notice was erroneously published (**Federal Register**: March 19, 2008 [Volume 73, Number 54], page 14847) prior to the release of the Draft PEA.

Shelby Walker,

Associate Program Director, Ocean Technology and Interdisciplinary Coordination, Division of Ocean Sciences, National Science Foundation.

[FR Doc. E8-5993 Filed 3-25-08; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 52-011-ESP; ASLBP No. 07-850-01-ESP-BD01]

Atomic Safety and Licensing Board Panel; In the Matter of Southern Nuclear Operating Co.; (Early Site Permit for Vogtle ESP Site); Memorandum and Order; (Notice of Opportunity To Make Oral or Written Limited Appearance Statements)

March 20, 2008.

Before the Licensing Board: G. Paul Bollwerk, III, Chairman, Nicholas G. Trikouros, Dr. James F. Jackson.

The Atomic Safety and Licensing Board hereby gives notice that, in accordance with 10 CFR 2.315(a), it will entertain oral limited appearance statements from members of the public in connection with this proceeding in which applicant Southern Nuclear Operating Company (SNC) seeks an early site permit (ESP) under 10 CFR Part 52 for an additional two reactors at the site of its existing Vogtle Electric Generating Plant near Waynesboro, Georgia. The ESP application involves various site safety issues, environmental protection issues, and plans for coping with emergencies that, if resolved in favor of SNC, generally would not be subject to relitigation if SNC later applies under Part 52 for a combined operating license that would authorize it to construct and operate the additional reactors at the Vogtle site.

A. Date, Time, and Location of Oral Limited Appearance Statement Sessions

These sessions will be on the following dates at the specified location and times:

1. Date: Sunday, April 27, 2008 (if there is sufficient interest).

Time: 4 to 6 p.m. Eastern Daylight Time (EDT).

Location: DoubleTree Hotel and Convention Center, 2651 Perimeter Parkway, Augusta, Georgia.

2. Date: Monday, April 28, 2008 (if there is sufficient interest).

Time: Evening Session—7 to 9 p.m. EDT.

Location: Same as Session 1 above.

B. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party, or the representative of a party, to the proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony

or evidence, they nonetheless may help the Licensing Board and/or the parties in their consideration of the issues in this proceeding.

In that regard, the contested issues currently before the Board in this proceeding that have been raised by the Joint Intervenors¹ concern facility cooling system impacts on aquatic resources and implementing a dry cooling system as a design alternative. Additionally, in accord with the agency's regulations governing ESP proceedings, this Board will at a later time be conducting a so-called "mandatory" hearing in which it will consider whether, with respect to those safety and environmental matters associated with the SNC ESP application that are not the subject of contested issues raised by intervenors, the NRC Staff performed an adequate review of the SNC application and made findings relative to that review with reasonable support in logic and fact.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as may be necessary to accommodate the speakers who are present. In this regard, if all scheduled and unscheduled speakers present at a session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending times listed above. The Board also reserves the right to cancel the Sunday afternoon and/or Monday evening sessions scheduled above if there has not been a sufficient showing of public interest as reflected by the number of preregistered speakers.

Any member of the public who plans to attend the limited appearance sessions is strongly advised to arrive early to allow time to pass through any security measures that may be employed. Attendees are also requested not to bring any unnecessary hand-carried items, such as packages, briefcases, backpacks, or other items that might need to be examined individually. Items that could readily be used as weapons will not be permitted in the rooms where these sessions will be held. Also, during these sessions, signs no larger than 18 inches by 18 inches will be permitted, but may not be attached to sticks, held over one's head, or moved about in the room.

The time allotted for each statement normally will be no more than five minutes. Nonetheless, to ensure everyone will have an opportunity to speak, the time allotted for each

¹ Joint Intervenors include the Center for a Sustainable Coast, Savannah Riverkeeper, Southern Alliance for Clean Energy, Atlanta Women's Action for New Directions, and Blue Ridge Environmental Defense League.

statement may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section C below and/or the number of persons present at the designated times. In addition, in the case of the Monday evening session, although an individual who previously addressed the Licensing Board at the Sunday afternoon limited appearance session may request an opportunity to make an additional presentation, the Board reserves the right to defer such additional presentations until after it has heard from speakers who have not had an opportunity to make an initial presentation.

C. Submitting a Request To Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by e-mail so as to be received by 5 p.m. EDT on Friday, April 18, 2008. The request must specify the session (Sunday or Monday) during which the requester wishes to make an oral statement. Based on its review of the requests received by April 18, 2008, the Licensing Board may decide that the Sunday afternoon and/or Monday evening sessions will not be held due to a lack of adequate interest in those sessions.

Written requests to make an oral statement should be submitted to:

Mail: Administrative Judge G. Paul Bollwerk III, Atomic Safety and Licensing Board Panel, Mail Stop T-3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Fax: (301) 415-5599 (verification) (301) 415-6094).

E-mail: map4@nrc.gov and gpb@nrc.gov.

D. Submitting Written Limited Appearance Statements

A written limited appearance statement may be submitted to the Board regarding this proceeding at any time. Such statements should be sent to the Office of the Secretary using one of the methods prescribed below, with a copy sent to the Licensing Board Chairman using the same method at the mail/e-mail address or fax number listed in section C above.

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Fax: (301) 415-1101 (verification) (301) 415-1966).

E-mail: hearingdocket@nrc.gov.

E. Availability of Documentary Information Regarding the Proceeding

General information regarding the Vogtle ESP proceeding can be found on the agency's Web site at <http://www.nrc.gov/reactors/new-licensing/esp/vogle.html>. Additionally, documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).² 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 (800) 397-4209 or (301) 415-4737, or by e-mail to pdr@nrc.gov.

F. Scheduling Information Updates

Any updated/revised scheduling information regarding the limited appearance sessions can be found on the NRC Web site at <http://www.nrc.gov/public-involve/public-meetings/index.cfm> or by calling (800) 368-5642, extension 5036, or (301) 415-5036.

It is so ordered.

Dated Rockville, Maryland: March 20, 2008.

For the Atomic Safety and Licensing Board.³

G. Paul Bollwerk III,
Administrative Judge.

[FR Doc. E8-6157 Filed 3-25-08; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the

² Some documents determined by the staff to contain "sensitive" information are publicly available only in redacted form; non-sensitive documents are publicly available in their complete form. In addition, some documents that may contain information proprietary to SNC are publicly available only in redacted form.

³ Copies of this memorandum and order were sent this date by the agency's E-Filing system to counsel for (1) applicant SNC; (2) Joint Intervenors; and (3) the staff.

Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 10-12, 2008, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 22, 2007 (72 FR 59574).

Thursday, April 10, 2008, Conference Room T-2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.-8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.-11:30 a.m.: Extended Power Uprate Application for the Hope Creek Generating Station (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and PSEG Nuclear, LLC, regarding the Extended Power Uprate Application for the Hope Creek Generating Station and the associated NRC staff's Safety Evaluation. [Note: A portion of this session may be closed to discuss and protect information that is proprietary to PSEG Nuclear, LLC, and their contractors pursuant to 5 U.S.C. 552b(c)(4).]

12:30 p.m.-2:30 p.m.: Pressurized Water Reactor Owners Group (PWROG) Topical Report WCAP-16793-NP, "Evaluation of Long-Term Cooling Considering Particulate, Fibrous, and Chemical Debris in the Recirculating Fluid" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and PWROG regarding the NRC staff's draft Safety Evaluation associated with the PWROG Topical Report WCAP-16793-NP, and related matters.

2:45 p.m.-4:45 p.m.: Proposed Licensing Strategy for the Next Generation Nuclear Plant (NGNP) (Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Department of Energy regarding the proposed licensing strategy for the Next Generation Nuclear Plant. [Note: This session will be closed to prevent disclosure of information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action pursuant to 5 U.S.C. 552b (c)(9)(B).]

5 p.m.-7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a response to the EDO Response to the December 20, 2007, ACRS Report on the Susquehanna Power Uprate Application. [Note: The

discussion of the proposed ACRS report on the Licensing Strategy for the Next Generation Nuclear Plant will be closed to prevent disclosure of information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action pursuant to 5 U.S.C. 552b (c)(9) (B).]

Friday, April 11, 2008, Conference Room T-2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Digital Instrumentation and Controls (I&C) Interim Staff Guidance and Related Matters (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Nuclear Energy Institute (NEI) regarding Digital I&C interim staff guidance, assessment of Digital System Operating Experience, Digital Reliability Modeling research, and related matters.

10:45 a.m.–11:30 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

11:30 a.m.–11:45 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports.

12:45 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports. [Note: The discussion of the proposed ACRS report on the Licensing Strategy for the Next Generation Nuclear Plant will be closed to prevent disclosure of information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action pursuant to 5 U.S.C. 552b (c)(9)(B).]

Saturday, April 12, 2008, Conference Room T-2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS

reports. [Note: The discussion of the proposed ACRS report on the Licensing Strategy for the Next Generation Nuclear Plant will be closed to prevent disclosure of information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action pursuant to 5 U.S.C. 552b (c)(9)(B).]

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92-463, I have determined that it may be necessary to close portions of this meeting noted above to discuss and protect information classified as proprietary to PSEG Nuclear, LLC, or their contractors pursuant to 5 U.S.C. 552b(c)(4), and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action pursuant to 552b(c)(9)(b).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Girija S. Shukla, Cognizant ACRS

staff (301-415-6855), between 7:30 a.m. and 4 p.m., (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at pdr@nrc.gov, or by calling the PDR at 1-800-397-4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> or <http://www.nrc.gov/reading-rm/doc-collections/> (ACRS & ACNW Mtg schedules/agendas).

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301-415-8066), between 7:30 a.m.—and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: March 20, 2008.

Andrew L. Bates,
Advisory Committee Management Officer.
[FR Doc. E8-6156 Filed 3-25-08; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. PAPO-001; ASLBP No. 08-861-01-PAPO-BD01]

Department of Energy; High-Level Waste Repository: Pre-Application Matters, Advisory PAPO Board; Notice of Reconstitution

Pursuant to 10 CFR 2.313 and 2.321, the Atomic Safety and Licensing Board in the above captioned United States Department of Energy proceeding is hereby reconstituted by appointing Administrative Judge Paul S. Ryerson in place of Administrative Judge E. Roy Hawkens.

In accordance with 10 CFR 2.302, henceforth all correspondence, documents, and other material relating to any matter in this proceeding over which this Licensing Board has jurisdiction should be served on Judge Ryerson as follows: Administrative Judge Paul S. Ryerson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Issued at Rockville, Maryland this 20th day of March 2008.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E8-6222 Filed 3-25-08; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

Facility Tour

AGENCY: Postal Regulatory Commission.

ACTION: Notice of Commission tour.

SUMMARY: On Thursday, March 27, 2008, Postal Regulatory Commissioners and advisory staff members will observe the Flats Sequencing System at the Postal Service's facility at Dulles Airport in Chantilly, Virginia.

DATES: March 27, 2008.

FOR FURTHER INFORMATION CONTACT: Ann C. Fisher, Chief of Staff, Postal Regulatory Commission, at 202-789-6803 or ann.fisher@prc.gov.

Steven W. Williams,

Secretary.

[FR Doc. E8-6187 Filed 3-25-08; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57530; File No. SR-OPRA-2008-01]

Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Adopt New Form of "Vendor Affiliate Agreement"

March 19, 2008.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder,² notice is hereby given that on March 3, 2008, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").³

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3-2). See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.opradata.com>.

The proposed OPRA Plan amendment would adopt a new form of "Vendor Affiliate Agreement" that may be used by an affiliate of an OPRA "Vendor" that wants also to become a Vendor. OPRA's Fee Schedule would be modified to state that OPRA will waive its Redistribution Fee for all affiliates in a corporate family with which OPRA agrees to Vendor Affiliate Agreements. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

The purpose of the proposed amendment to adopt a new form of "Vendor Affiliate Agreement" that may be used by an affiliate of an OPRA "Vendor" that wants to also become an OPRA "Vendor" and to specify in OPRA's Fee Schedule that OPRA will waive its "Redistribution Fee" for affiliates with which OPRA agrees to Vendor Affiliate Agreements.

OPRA's form of Vendor Agreement authorizes only the Vendor itself, and not any of its affiliates, to disseminate OPRA Data. As a matter of policy, OPRA has permitted Vendors to disseminate OPRA Data through wholly-owned subsidiaries. However, OPRA's policy has been not to permit Vendors to disseminate OPRA Data through other affiliates that have not themselves signed Vendor Agreements with OPRA. Many Vendors conduct business through corporate families, for a variety of reasons. OPRA requires each OPRA Vendor to pay a monthly "Redistribution Fee,"⁴ and OPRA has from time to time received requests to alleviate the financial consequence that OPRA's current policy imposes on some Vendor families.

Accordingly, OPRA is proposing to amend its Fee Schedule to provide that OPRA will waive its Redistribution Fee for Vendor affiliates that themselves become Vendors pursuant to "Vendor Affiliate Agreements," and is proposing to adopt a new form of "Vendor Affiliate Agreement." In effect, the form of Vendor Affiliate Agreement is a "short form" Vendor Agreement that can be

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The seven participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, the NYSE Arca, Inc., the Philadelphia Stock Exchange, Inc., and the NASDAQ Stock Market LLC.

⁴ OPRA's Redistribution Fee is currently \$650/month for "Internet service only" Vendors, and \$1,500/month for all other Vendors.

signed by an additional member of a Vendor's corporate family. The proposed form would require the additional member of a corporate family to acknowledge that it is subject to and bound by the terms of the "lead" Vendor's Vendor Agreement just as if it had signed the Agreement itself. The proposed form is designed so that it can be used by affiliates of a current OPRA Vendor without any need for the current Vendor to sign a new Vendor Agreement.⁵

The text of the proposed amendment to the OPRA Plan and the proposed changes to the OPRA Fee Schedule are available at OPRA, the Commission's Public Reference Room, and <http://opradata.com>.

II. Implementation of the OPRA Plan Amendment

OPRA will begin to use the proposed form of Vendor Affiliate Agreement upon its approval by the Commission pursuant to Section 11A of the Act⁶ and Rule 608(b)(1) thereunder.⁷

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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-;OPRA-2008-01 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-OPRA-2008-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

⁵ However, the current Vendor (or a new "lead" Vendor) would be required to identify its affiliate(s) that will sign Vendor Affiliate Agreements in its "Description of Vendor's Service"—Exhibit A to its Vendor Agreement—as in effect from time to time. The lead Vendor would also be required to describe the dissemination of OPRA Data by such affiliate(s) in its Exhibit A.

⁶ 15 U.S.C. 78k-1.

⁷ 17 CFR 242.608(b)(1).

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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 OPRA. 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-OPRA-2008-01 and should be submitted on or before April 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E8-6124 Filed 3-25-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57531; File No. SR-Amex-2008-24]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Additional Options Classes in the Options Penny Quoting Pilot Program

March 19, 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 17, 2008, the American Stock Exchange LLC ("Amex" 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 Amex. The Exchange has designated this

proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) 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

Amex proposes to identify the additional options classes that will be subject to the current pilot program for the quoting of options classes in pennies (the "Penny Quoting Pilot Program" or "Pilot Program").

The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex 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 Amex proposes to identify for market participants the additional options classes that will be included in the current Penny Quoting Pilot Program.⁵ The Exchange believes that this proposal is necessary in order to adequately notify market participants regarding the upcoming addition of options classes that will be included in the current Pilot Program.

The current Penny Quoting Pilot Program includes thirty-five (35)

options classes. As set forth in the September 2007 Order, the expansion of the Pilot Program is to occur in two (2) phases. Under the first phase, which began on September 28, 2007, the Exchange expanded the Pilot Program to include an additional twenty-two (22) options classes. These consisted of the most actively-traded options classes (excluding Google (GOOG), Nasdaq-100 Index (NDX) and the Russell 2000 Index (RUT)). The thirty-five (35) current options classes included in the Penny Quoting Pilot Program represent approximately 35% of total industry options volume.

The second phase, which is scheduled to commence on March 28, 2008, will add twenty-eight (28) additional option classes. The Commission in the September 2007 Order previously approved this expansion of twenty-eight additional options classes, however, at that time, the actual identity of the options classes to be included in the Pilot Program was undecided. Accordingly, the instant proposal identifies these twenty-eight (28) additional options classes for phase two of the Pilot Program. Attached as *Exhibit 2* to the filing is a draft Regulatory Circular setting forth the list of additional options classes to be included in the Pilot Program. The Pilot Program will then consist of sixty-three (63) options classes representing approximately 50% of total industry options volume.

The current Penny Quoting Pilot Program will terminate, unless extended, on March 27, 2009.

The Exchange continues to believe that the additional options classes that may quote in pennies under the Pilot Program is reasonable given the system capacity constraints and quote mitigation strategies in place at the Amex as well as the other options exchanges.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁶ in general and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the identity of the additional options classes in this filing will provide market participants

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ See Securities Exchange Act Release Nos. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR-Amex-2006-106); 56159 (July 27, 2007), 72 FR 43300 (August 3, 2007) (SR-Amex-2007-76); and 56567 (September 27, 2007), 72 FR 56396 (October 3, 2007) (SR-Amex-2007-96) (the "September 2007 Order").

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

adequate notification of future changes to the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁸ and Rule 19b-4(f)(1) thereunder,⁹ because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Amex.

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.¹⁰

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-Amex-2008-24 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-Amex-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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2008-24 and should be submitted on or before April 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-6125 Filed 3-25-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57532; File No. SR-Amex-2008-21]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate the Nasdaq UTP Equity Fee Schedule

March 19, 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 10, 2008, the American Stock Exchange LLC ("Amex" 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 Exchange has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member, pursuant to Section 19(b)(3)(A)(ii) of the Act³ 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 Exchange proposes to eliminate the Nasdaq UTP Equity Fee Schedule. The text of the proposed rule change is available at the Exchange's principal office, on the Exchange's Web site at <http://www.amex.com>, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the Nasdaq UTP Equity Fee Schedule for transactions in connection with the Exchange's Nasdaq UTP Program. As a replacement for the Nasdaq UTP Equity Fee Schedule, the Exchange proposes to charge members for transactions in Nasdaq UTP securities pursuant to the Exchange's existing Equity Fee Schedule.

Currently, transaction fees for Nasdaq UTP securities are differentiated between specialist trades (\$0.10 per 100 shares), member competing market maker trades (\$0.15 per 100 shares), non-member competing market maker trades (\$0.15 per 100 shares), Amex equity traders (\$0.15 per 100 shares),

⁸ 15 U.S.C. 78s(b)(3)(A)(i).

⁹ 17 CFR 240.19b-4(f)(1).

¹⁰ See 15 U.S.C. 78s(b)(3)(C).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

non-member customer trades (\$0.15 per 100 shares) and member customer trades (\$0.15 per 100 shares).⁵ In addition, the Exchange waives specialist transaction charges for those specialists that do not charge a commission to customers. With respect to crosses, there is a maximum charge of \$50 per side per trade. The Exchange does not charge for Nasdaq UTP securities transactions executed at a price of less than \$1.00 per share.

This proposal would eliminate the separate Nasdaq UTP Equity Fee Schedule and instead charge members for Nasdaq UTP transactions pursuant to the existing Equity Fee Schedule. As a result, transaction charges for customers would be based on the number of shares executed per month. The current rate is \$0.0030 for shares executed in a month of up to 50 million and \$0.0025 for shares executed in a month over 50 million. A transaction charge is assessed only on the first 5,000 shares of any transaction. In addition, transactions resulting from orders entered electronically into the Amex Order File from off the floor ("System Orders") for up to 500 shares are not assessed a transaction charge. The fee for shares that execute with a price below \$1.00 per share is 0.3% of the total dollar value of the transaction.

Specialist charges under the Equity Fee Schedule are \$0.0003 per share side or \$0.03 per 100 shares. Nasdaq UTP securities would also be subject to the equities order cancellation fee which provides that the executing clearing member is charged \$0.25 for every additional equities and ETF order sent for a mnemonic and cancelled through Amex systems in a given month when the total number of equities and ETF orders cancelled for that mnemonic is more than 50 times the equities and ETF orders executed through Amex systems for that mnemonic in that same month. Cancellations resulting from "Immediate or Cancel" or "Fill or Kill" orders and cancellations entered to cancel at the opening orders not executed at the opening are not counted towards the number of cancellations used to determine whether the fee should be applied to a mnemonic and will not be counted when determining the amount of the cancellation fee charged to an executing clearing member. Executions of "Immediate or Cancel" and "Fill or Kill" orders will however be counted towards the number of executions.

Clearing charges for orders routed to and executed on another exchange or

market center are assessed at a monthly rate of \$0.0004 per share (\$0.04 per 100 shares). In addition, the Equity Fee Schedule also charges members for orders routed to and executed on another exchange or market center at the monthly rate of \$.0030 per share (\$0.30 per 100 shares). This routing charge for shares that execute with a share price below \$1.00 is 0.3% of the total dollar value of the transaction.

The elimination of the Nasdaq UTP Equity Fee Schedule would be effective immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁶ in general and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members through the elimination of a separate fee schedule applicable to the Exchange's Nasdaq UTP Program. Members engaging in transactions in Nasdaq UTP securities would be subject to the Exchange's Equity Fee Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

Because the foregoing rule change is establishing or changing a due, fee, or other charge applicable only to a member, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder.⁹ At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2008-21 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-Amex-2008-21. 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-Amex-2008-21 and should be submitted on or before April 16, 2008.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

⁵ These fees are charged only to Exchange members.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-6126 Filed 3-25-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57537; File No. SR-NASDAQ-2008-021]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Processing of Orders That Peg to the Midpoint Between the National Best Bid and Best Offer

March 20, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 19, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the 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

Nasdaq is amending Rule 4751(f) to modify the processing of orders that peg to the midpoint between the national best bid and best offer ("NBBO"). Nasdaq proposes to implement the proposed rule change immediately following the conclusion of the 30-day operative delay period. The text of the proposed rule change is available on Nasdaq's Web site: (<http://www.complinet.com/nasdaq>), at the principal office of Nasdaq, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify the rule language pertaining to pegged orders to enable orders that peg to the midpoint of the national best bid and best offer ("Midpoint Pegged Orders") to execute in sub-penny increments when the inside spread is an odd number of pennies. Nasdaq's current pegging functionality does not display, rank, or execute Midpoint Pegged Orders in sub-penny increments. In light of the recent approval of a proposed rule change by NYSEArca relating to its Mid-Point Passive Liquidity ("MPL") Order, Nasdaq is proposing to modify its processing of Midpoint Pegged Orders to resemble the processing of MPL Orders on NYSEArca.⁴

The following examples illustrate how the proposed rule change would operate (note that the price of the order updates in response to changes in the best bid and best offer, excluding the order's own impact on the best bid or best offer):

Current Processing

- The best bid on Nasdaq is \$20.00 and the best offer is \$20.03.
- The price of the Midpoint Peg Order to buy will be \$20.01. The true midpoint would be \$20.015, but to avoid pricing the order in a sub-penny increment the bid is rounded down. However, if the order instead were a sell order, the offer would be rounded up.
- The best offer updates to \$20.02.
- The price of the Midpoint Peg Order remains \$20.01.

Proposed Processing

Scenario 1:

- The best bid on Nasdaq is \$20.00 and the best offer is \$20.03.

- The price of the Midpoint Peg Order to buy will be \$20.015.
- The best offer updates to \$20.02.
- The price of the Midpoint Peg Order will change to \$20.01.

Scenario 2: the market is as follows:

Bid	Offer
11.00 Nasdaq	10.00 NYSE

- A Midpoint Peg Order to sell is entered into NASDAQ.
- The order is priced at 10.50.
- The order is marketable against the Nasdaq buy order and will execute at 11.00, the price of the buy order on the Nasdaq book.
- If the Nasdaq 11.00 bid had instructions to route, at the time of the cross, it would have routed to NYSE for execution.

Scenario 3: the market is as follows:

Bid	Offer
11.00 CHX	10.00 NYSE
9.00 Nasdaq	12.00 Nasdaq

- A Midpoint Peg Order to buy is entered into Nasdaq.
- The order is priced at 10.50, the midpoint of the NBBO.
- The order is not executable on Nasdaq.
- If the order has instructions to route, it will be routed to NYSE for execution.
- If the order does not have instructions to route, it will be posted to the NASDAQ book at 10.50 non-display.

With respect to Regulation NMS, a Midpoint Pegged Order would be ranked in time priority for the purposes of execution as long as the midpoint is within the limit range of the order. A Midpoint Pegged Order will no longer be displayed, whereas Nasdaq currently displays Midpoint Pegged Orders in penny increments.⁵ A Midpoint Pegged Order would be executed in sub-pennies if necessary to attain a midpoint price. In addition, the execution of a Midpoint Pegged Order would not result in a trade-through of a Protected Quotation. A Midpoint Pegged Order would execute against orders on the Nasdaq book or against incoming orders, including other Midpoint Pegged Orders. If the NBBO is locked, the Midpoint Pegged Order would be executed at the locked market price.

If the NBBO is crossed, the Nasdaq system would continue to accept and process Midpoint Pegged Orders.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 56072 (July 13, 2007), 72 FR 39867 (July 20, 2007) (SR-NYSEArca-2007-061) (Notice of Filing and Immediate Effectiveness of MPL Order).

⁵ On Nasdaq, Non-Displayed Orders, such as the Midpoint Pegged Order as proposed, always receive lower execution priority than similarly priced Displayed Orders regardless of time of entry.

However, they generally would not execute against other Midpoint Pegged Orders during a crossed market because they are already marketable against interest on other automated trading centers that are creating the crossed market or marketable against better priced interest on Nasdaq. If Nasdaq's best quote is not part of the crossed NBBO and a Midpoint Pegged Order to buy (sell) has instructions to route, the Nasdaq system would route it to an automated trading center that is displaying a better priced order to sell (buy). Thus, there would not be an execution against an inferior sell (buy) order on Nasdaq. If Nasdaq's best quote is not part of the crossed NBBO and a Midpoint Pegged Order to buy (sell) does not have instructions to route, the Nasdaq system would execute it against a marketable sell (buy) order on Nasdaq, even though a better priced sell (buy) order is being displayed by an automated trading center. If it were not marketable on the Nasdaq book, it would post undisplayed to the book. If the automated NBBO is crossed, a Midpoint Pegged Order to buy and a Midpoint Pegged Order to sell would execute against each other on the Nasdaq system only if both orders had instructions not to route, and neither order had previously executed against marketable interest on the Nasdaq book. As a result, the execution of a Midpoint Pegged Order during a crossed market would not implicate the duty of best execution any differently than other orders entered into or executed by the Nasdaq system. As examples 2 and 3 above show, if the order has instructions to route, it would be routed away without implication for best execution. If there is no routing instruction, the order would either execute or post to the Nasdaq book.

Nasdaq believes that the implementation of the proposed rule change modifying will enhance order execution opportunities on Nasdaq. The Exchange believes that the proposed order type will allow for additional opportunities for liquidity providers, especially institutions, to passively interact with interest in the Nasdaq book.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,⁶ in general, and with section 6(b)(5) of the Act,⁷ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Nasdaq believes this proposal is consistent with Rule 612 of Regulation NMS under the Act, including the guidance provided in question number two of *Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 612 (Minimum Pricing Increment) of Regulation NMS*.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, Nasdaq's processing of orders pegged to the midpoint of the NBBO is designed to compete with orders already approved and in use at other national securities exchanges, enhancing competition between the exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NASDAQ-2008-021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-021. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

submissions should refer to File Number SR-NASDAQ-2008-021 and should be submitted on or before April 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-6123 Filed 3-25-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57534; File No. SR-NASDAQ-2008-015]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, To Modify Fees Associated With Proceedings Under Rule 11890

March 20, 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, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. On March 18, 2008, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2)⁵ thereunder, as establishing or changing a due, fee, or other charges applicable to a member, 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, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify fees associated with proceedings under Rule 11890. Nasdaq will implement this rule change on March 3, 2008.

The text of the proposed rule change is below. Proposed new language is

italicized; proposed deletions are in brackets.⁶

11890. Clearly Erroneous Transactions

(a)-(b) No change.

(c) Review by the Market Operations Review Committee (“MORC”)

(1)-(3) No change.

[(4) The party initiating the appeal shall be assessed a \$500.00 fee if the MORC upholds the decision of the Nasdaq officer. In addition, in instances where Nasdaq, on behalf of a member, requests a determination by another market center that a transaction is clearly erroneous, Nasdaq will pass any resulting charges through to the relevant member.]

(d) No change.

(e) Fees

(1) Filing Fees

No fee shall be assessed to a member for filing two or fewer unsuccessful clearly erroneous complaints pursuant to paragraph (a)(2) during a calendar month. A member shall be assessed a fee of \$250.00 for each additional unsuccessful complaint filed thereafter during the calendar month. An unsuccessful complaint is one in which Nasdaq does not break any of the trades included in the complaint. Each security filed on is considered a separate complaint. In cases where the member files on multiple securities at the same time, Nasdaq calculates the fee separately for each security depending upon whether Nasdaq breaks any trades filed on by the member in that security. Adjustments or voluntary breaks negotiated by Nasdaq to trades executed at prices that meet the percentage thresholds in IM-11890-4 count as breaks by Nasdaq for purposes of this paragraph. A member is defined by each unique broker Web CRD Number. All MPIDs associated with that Web CRD Number shall be included when calculating the number of unsuccessful clearly erroneous complaints for that member during the calendar month. No fee pursuant to this paragraph (e)(1) shall be assessed for a complaint that is (A) successful, where the final decision by Nasdaq (including after appeal, if any) is to break at least one of the trades filed on by the member, (B) not timely filed under the parameters in paragraph (a)(2)(A), (C) withdrawn by the complainant within five (5) minutes of filing and before Nasdaq has performed any substantial work on the complaint, or (D) adjudicated by Nasdaq on its own motion under Rule 11890(b).

(2) Appeal Fees

The party initiating an appeal shall be assessed a \$500.00 fee if the MORC upholds the decision of the Nasdaq officer.

(3) Fees Charged By Another Market Center

In instances where Nasdaq, on behalf of a member, requests a determination by another market center that a transaction is clearly erroneous, Nasdaq will pass any resulting charges through to the relevant member.

* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is amending Rule 11890, which covers the breaking of trades determined to be clearly erroneous, to add a new Rule 11890(e) that would consolidate Nasdaq’s existing appeal fee, without substantive change, with a new fee of \$250.00 for the filing of certain unsuccessful clearly erroneous adjudication complaints.

Self-regulatory organizations like Nasdaq have authority to adjudicate trade disputes and break trades in appropriate circumstances to maintain a fair and orderly market. This authority is codified in Nasdaq Rule 11890. Nasdaq believes that this authority provides an important protection to the market by preventing trading errors and system problems from distorting the price discovery process. Rule 11890 also provides a number of procedural steps intended to protect the integrity of the adjudicatory process.

While these steps are a necessary part of the process, they require significant staff time to process each complaint. This benefits all market participants, including Nasdaq members. Despite this, Nasdaq historically has not charged members for this process.

The costs to Nasdaq of providing this service to members have increased in recent years as the number of

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made clarifying changes to the proposed rule text and the purpose section of the filing.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.complinet.com>.

complaints has increased. In 2005, 2006 and 2007, Nasdaq processed 841, 3,859 and 5,676 complaints, respectively. In addition, the size and complexity of trading events have increased. There has been an increase in the number of large events (defined as 8 or more counterparties), from 81 such filings in 2005 to 394 in 2007. There also has been a significant increase in the number of complaints involving trades routed to or from other market centers, further increasing the complexity of processing filings. Discussions with other electronic market centers suggest that these markets also are receiving significantly more trade break requests.

In order to increase transparency in the adjudication process, Nasdaq provided guidance in IM-11890-4 on which trades are likely to be considered clearly erroneous. This guidance focused on numerical thresholds below which trades would likely stand⁷ and above which trades would likely be broken.⁸ Despite this guidance, Nasdaq continues to receive a significant number of filings that do not meet the thresholds or have material news that seemed to affect the price of the security.⁹

Nasdaq considered the amount of effort incurred to process complaints in calculating the \$250 filing fee. Rule 11890 outlines a number of procedural steps for processing complaints. Once MarketWatch receives a complaint, an analyst must complete the following steps:¹⁰

- Review the filing for completeness and call the filer to confirm the information, which must often be updated or revised;
- Confirm the trades at issue and the events surrounding the error;
- Call each of the counterparties and see if they are interested in an adjustment of the terms, or a mutual break of, the trade(s), which may require

⁷ As provided in the guidance, the circumstances in which trades below the thresholds could be broken are extremely limited. Trades in a stock subject to an initial public offering that execute prior to the opening of the offering are an example of trades that would be broken at prices below the threshold.

⁸ The guidance also included factors Nasdaq would consider in deviating from these numerical thresholds, including material news, trading activity and reasons for the error.

⁹ Nasdaq received 1,478 timely clearly erroneous complaints during 2007 where it declined to break any trades because the trades did not meet the guidance or parameters in the rule. This represents approximately 26% of the total complaints received that year.

¹⁰ In certain circumstances where Nasdaq is processing a large number of complaints, the call out process may be streamlined in order to provide rapid decisions and market certainty as to which trades will stand.

additional rounds of calls to relay the offer or further negotiate the settlement;

- Identify portions of the disputed trades that were routed to other markets and requesting adjudication by those markets;
- Present the information to the Nasdaq Officer for a decision;
- Notify the filer and counterparties of Nasdaq's decision on the complaint; and
- Assemble the required documentation for Nasdaq's records.

Nasdaq estimates that on average it takes 20–25 minutes to process a small complaint and may take up to an hour to process larger events under Rule 11890(a). Nasdaq is required to go through these steps even in cases where the guidance in IM-11890-4 makes it clear that all trades will stand.

Under Nasdaq's proposal, the filing fee would only apply to unsuccessful clearly erroneous complaints, where Nasdaq does not break any of the trades filed on by the member. Adjustments or voluntary breaks negotiated by Nasdaq to trades executed at prices that meet the percentage thresholds in IM-11890-4 count as a break by Nasdaq for purposes of determining whether a complaint is successful. The fee would not apply to the first two unsuccessful complaints filed by the member during a calendar month. The \$250 fee would only apply to any additional unsuccessful complaints filed by the member during that month. The fee is calculated on a per-security basis so that each security filed on is considered a separate complaint, even if there are multiple securities included in the firm's clearly erroneous filing. For example, if a firm files on trades in three securities and Nasdaq breaks trades in one of the three, Nasdaq would consider the firm to have filed two unsuccessful complaints and one successful complaint. Only the two unsuccessful complaints would be counted for purposes of the fee. The fee would apply to final decisions of Nasdaq. Therefore, if the Nasdaq officer refused to break trades and the Market Operations Review Committee ("MORC") overturned the officer and broke at least some of the trades, no fee would be due with respect to that security and the complaint would not count towards the unsuccessful complaint calculation.¹¹

In calculating how many unsuccessful complaints a member had filed during the month, Nasdaq will look to the

¹¹ The MORC is composed of independent persons who are not employees of Nasdaq and who have no economic interest in the trades or the assessment of the fee.

member's broker Web CRD Number.¹² All Market Participant Identifiers ("MPIDs") associated with that Web CRD Number shall be included in the calculation for that member. This removes any incentive for firms to request additional MPIDs solely to avoid paying the fee.

Nasdaq considered whether each complaint should be subject to the filing fee in light of the administrative costs associated with both successful and unsuccessful filings, but concluded that the fee should be limited to unsuccessful filers. Nasdaq believes that this application encourages appropriate use of clearly erroneous complaints by assessing costs on firms who do not properly consider the merits of their request. Instead of filing on any trading error, the filing fee may incentivize firms to consider carefully whether:

- The trades meet the thresholds set forth in IM-11890-4;
- the amount of money at risk merits filing a complaint;¹³ and
- an investment in system safeguards that might reduce trading errors.

Charging firms only for unsuccessful complaints is consistent with Nasdaq's existing appeal fee, which is assessed only on unsuccessful appeals. In addition, Nasdaq believes that exempting two unsuccessful complaints from the fee will assist members in close calls where news or other factors might result in Nasdaq not breaking trades that otherwise meet the numerical thresholds for trade breaks. Based on an analysis of complaint filings in December 2007, 13 members had more than two unsuccessful erroneous complaints.¹⁴

The proposed filing fee would not be assessed for a complaint that is:

- Successful, in that Nasdaq breaks at least one of the trades on which the member filed;
- filed late under the time parameters in Rule 11890(a)(2)(A) and therefore rejected;
- withdrawn by the complainant within five (5) minutes of filing and before Nasdaq has performed any substantial work on the complaint; or

¹² The Financial Industry Regulatory Authority ("FINRA") maintains the Central Registration Depository ("CRD"). This data base includes information on more than half a million registered securities employees of member firms through the automated Web CRD system. Each member receives a unique Web CRD Number.

¹³ During December 2007, Nasdaq received 48 complaints for fewer than 100 shares, including six filings for fewer than 5 shares.

¹⁴ Nasdaq received complaints from an average of 98 members a month during 2007. Accordingly, a comparatively small number of members would be affected by the filing fee.

• adjudicated by Nasdaq under its motion pursuant to Rule 11890(b) as part of a large market event.

While Nasdaq may incur some cost in reviewing complaints for timeliness and prior to withdrawal, this exception will allow firms to withdraw or correct mistaken complaints without such filings counting towards their monthly allotment. While Nasdaq incurs considerable expense in processing clearly erroneous events under Rule 11890(b), such large systemic events often impact multiple filers and may not easily be billed to a particular party. Therefore, Nasdaq will continue to absorb costs related to Rule 11890(b) adjudications. Any filer with trades included in such events will not be charged and the filing will not count towards calculation of a member's unsuccessful complaints.

Finally, the proposal reorganizes Rule 11890 to consolidate the fee-related provisions in one section, Rule 11890(e), titled "Clearly Erroneous Fees." Nasdaq believes this will make it easier for readers to locate these provisions in the rule. No substantive change has been made to the existing fee for appeal of clearly erroneous decisions or the provisions enabling Nasdaq to pass through to members charges it is assessed by other markets for requesting erroneous review by that venue on behalf of members.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in general, and with Section 6(b)(4) of the Act,¹⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that the fees will be reasonably allocated to members that file unsuccessful complaints under Rule 11890, thereby allowing Nasdaq to recoup a portion of the costs associated with filings that lack merit.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁷ and Rule 19b-4(f)(2)¹⁸ thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member.

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.¹⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2008-015 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-NASDAQ-2008-015. 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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ See 15 U.S.C. 78s(b)(3)(C). 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 March 18, 2008, the date on which Nasdaq submitted Amendment No. 1.

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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-015 and should be submitted on or before April 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-6127 Filed 3-25-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57535; File No. SR-OCC-2008-01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to its Facilities Management Agreements

March 20, 2008.

I. Introduction

On January 9, 2008, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on February 19, 2008.² No comment letters were received. This

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 57304 (February 11, 2008), 73 FR 9155.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(4).

order approves the proposed rule change.

II. Description

The purpose of the proposed rule change is to provide an expedited process for reviewing a facilities management agreement proposed to be entered into by an operationally capable clearing member that desires to become a managed clearing member. A managed clearing member is one that outsources certain of its obligations as a clearing member to another clearing member ("managing clearing member").

Currently, Rule 309 prohibits a clearing member that proposes to enter into an outsourcing agreement with a managing clearing member from implementing the agreement without the prior approval of the Membership/Risk Committee ("Committee").³ In 2006 and 2007, the Committee reviewed three requests to approve such outsourcing arrangements. However, none of the three clearing member's desired time frame for implementing its facilities management arrangement coincided with a regularly scheduled meeting of the Committee, and each firm was required to defer executing its outsourcing plans until after a meeting occurred.

To provide for a more timely review of certain outsourcing agreements, OCC is modifying Rule 309. As amended, Rule 309 will provide that a managed clearing member is permitted to request an expedited review of its outsourcing agreement, and if OCC consents to an expedited review, the Chairman, the Management Vice Chairman, or the President will be authorized to determine whether the agreement meets applicable requirements and to approve or disapprove the agreement. At the next regularly scheduled Committee meeting, the Committee would independently review the outsourcing agreement and would determine de novo whether to approve or disapprove it. In the event the Committee's decision would result in a modification or a reversal of the action taken by the Chairman, the Management Vice Chairman, or President, no actions previously taken by OCC or the clearing member prior to the modification or reversal would be invalidated and no rights of any person arising out of such previous actions would be affected. In the unlikely event that the Committee disapproved an agreement previously approved by OCC, the clearing member would be given a reasonable time either

to enter into an appropriately revised outsourcing agreement or to cease to be a Managed Clearing Member.

This process is comparable to the process used when clearing members request expedited approval to clear a new type or kind of transaction.⁴ OCC believes that the proposed expedited review process strikes a reasonable balance between meeting the business requirements of clearing members and continuing to ensure appropriate review of the operational and financial aspects of outsourcing arrangements.

The expedited review process is set forth in Interpretation & Policy .01 under Rule 309. The existing Interpretation and Policy .01, which required managing clearing members as of October 1, 2003, to meet revised capital requirements by October 1, 2004, is no longer applicable and is therefore being deleted. In addition, a technical change is being made to paragraph (f) of Rule 309 so that the language more closely parallels the language used in a cross-referenced By-law provision.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.⁵ The Commission finds the proposed rule change to be consistent with this requirement because the actions of senior management to approve an outsourcing agreement prior to a scheduled Committee meeting are subject to the Committee's subsequent review and approval.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2008-01) be and hereby is approved.⁶

⁴ Article V, Section 1, Interpretation & Policy .03e. See also Securities Exchange Act Release No. 30169 (January 8, 1992) 57 FR 1776 [SR-OCC-91-06].

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-6128 Filed 3-25-08; 8:45 am]

BILLING CODE 8011-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes new information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the Agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, e-mail address: OIRA_Submission@omb.eop.gov.

(SSA) Social Security Administration, DCBFBM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400, e-mail address: OPLM.RCO@ssa.gov.

The information collections listed below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. Therefore, submit your comments to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-0454 or by writing to the address listed above.

1. *Authorization to Obtain Earnings Data from the Social Security Administration—0960-0602.* A wage earner or an organization may request

⁷ 17 CFR 200.30-3(a)(12).

³ Rule 309(f). See also Securities Exchange Act Release No. 55686 (May 1, 2007), 72 FR 26191 (May 8, 2007) [SR-OCC-2006-21].

detailed earnings information from SSA. SSA collects the information on the SSA-581 to identify the earnings record, verify authorized access to the earnings record, and produce an itemized statement for release to the proper party. The respondents are various private/public organizations/agencies needing detailed earnings information.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 33,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 1,100 hours.

2. *Statement Regarding the Inferred Death of an Individual by Reason of Continued and Unexplained Absence—20 CFR 404.720 & 404.721—0960-0002.* Section 202(d)-(i) of the Social Security Act provides for the payment of various monthly survivor benefits and a lump sum death payment to certain survivors upon the death of an individual who dies fully or currently insured. In the event a person has been absent from his or her residence and has not been heard from for at least 7 years, SSA will presume he or she is deceased. SSA collects information on Form SSA-723-F4 to determine if SSA may presume a missing wage earner is deceased and, if so, to establish a date of presumed death. The respondents are persons having knowledge about the disappearance of a wage earner.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 3,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 1,500 hours.

3. *Railroad Employment Questionnaire—20 CFR 404.1401, 404.1406-404.1408—0960-0078.* SSA uses the data on the SSA-671 to secure sufficient information to effect the required coordination with the Railroad Retirement Board for Social Security claims processing. SSA obtains data whenever claimants give indications of employment in the railroad industry. The respondents are applicants for Social Security benefits employed by a railroad or dependents of railroad workers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 125,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 10,417 hours.

4. *Government Pension Questionnaire—20 CFR 404.408a—0960-0160.* The Social Security Act and regulations provide an individual receiving spousal benefits and concurrently receiving a Government pension based on his or her own earnings not covered by Social Security may have the amount of the Social Security benefit reduced by two-thirds the amount of the Government pension. SSA uses the information on the SSA-3885 to determine whether the individual's Social Security benefit is subject to reduction, the amount of the reduction, the effective date of the reduction, and whether one of the exceptions in 20 CFR 404.408a applies. The respondents are individuals receiving spousal benefits and a Government pension.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 12.5 minutes.

Estimated Annual Burden: 6,250 hours.

5. *Teacher Questionnaire and Request for Administrative Information—20 CFR 416.1103(f)—0960-0646.* SSA must consider all relevant evidence when determining a child's disability under Title XVI of the Social Security Act. When determining the effects of a child's (or other individual's) impairment(s), SSA must obtain information about the child's functioning. Using Forms SSA-5665 and SSA-5666, SSA obtains formal testing results, teacher reports, therapy progress notes, individualized education program information and other records of a child's educational aptitude and achievement. The respondents are parents, teachers and other education personnel.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 618,000.

Frequency of Response: 1.

Average Burden per Response: 45 minutes.

Estimated Annual Burden: 463,500 hours.

6. *Statement of Income and Resources—20 CFR 416.207, 416.301—416.310, 416.704, and 416.708—0960-0124.* SSA collects information about income and resources on form SSA-8010-BK in Supplemental Security Income (SSI) claims and redeterminations. SSA uses the

information to make initial or continuing eligibility determinations for SSI claimants/recipients who are subject to deeming. The respondents are persons whose income and resources may be deemed (considered available) to applicants or beneficiaries of SSI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 341,000.

Frequency of Response: 1.

Average Burden per Response: 26 minutes.

Estimated Annual Burden: 147,767 hours.

7. *Application for Supplemental Security Income—20 CFR 416.207 and 416.305—416.335, Subpart C—0960-0229.* SSA has prescribed the Form SSA-8000 as the application for SSI payments. SSA uses the information gathered on the SSA-8000 to determine whether claimants meet all statutory and regulatory requirements for SSI eligibility and to determine the amount of such benefits. The respondents are applicants for SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,281,620.

Frequency of Response: 1.

Average Burden per Response: 36 minutes.

Estimated Annual Burden: 768,972 hours.

8. *Medicare Modernization Act Outreach Mailer—20 CFR 418—0960-NEW.* To: (1) promote awareness of the Medicare Part D subsidy program; and (2) encourage potentially eligible Medicare beneficiaries to complete Form SSA-1020 (OMB No. 0960-0696, the Application for Help with Medicare Prescription Drug Plan Costs), SSA plans to use a new outreach brochure including a mailer. Pharmacies, doctors' offices, and medical clinics will display and distribute copies of the brochure incorporating a mailer to encourage eligible Medicare beneficiaries to request and complete Form SSA-1020. The brochure will include an insert beneficiaries complete to request Form SSA-1020 from SSA. SSA will make follow-up phone calls to beneficiaries who use the mailer to request an SSA-1020 but do not submit it to the Agency. The respondents are Medicare beneficiaries who: (1) are potentially eligible for Part D subsidy benefits; and (2) request a copy of Form SSA-1020 using the brochure insert.

Type of Request: New information collection.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Mailer Insert	75,000	1	1	1,250
Follow-Up Phone Calls	30,000	1	1	500
Totals	105,000	1,750

Dated: March 19, 2008.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E8-5983 Filed 3-25-08; 8:45 am]

BILLING CODE 4191-02-P

Dated: March 19, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8-6204 Filed 3-25-08; 8:45 am]

BILLING CODE 4710-05-P

Dated: March 20, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8-6262 Filed 3-25-08; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6152]

Culturally Significant Objects Imported for Exhibition Determinations: "Maria Sibylla Merian & Daughters: Women of Art and Science"

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 "Maria Sibylla Merian & Daughters: Women of Art and Science," 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 J. Paul Getty Museum, from on or about June 10, 2008, until on or about August 31, 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 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.

DEPARTMENT OF STATE

[Public Notice 6154]

Culturally Significant Objects Imported for Exhibition Determinations: "Jeff Koons on the Roof"

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 "Jeff Koons on the Roof", imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, from on or about April 21, 2008, until on or about October 26, 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 Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8058). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

DEPARTMENT OF STATE

[Public Notice 6153]

Meetings of the United States-Chile Environment Affairs Council

ACTION: Notice and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that, as set forth in Chapter 19 (Environment) of the United States-Chile Free Trade Agreement (FTA), the two governments intend to hold the fourth meeting of the Environment Affairs Council (the "Council") in Santiago, Chile on April 24, 2008. A public information session will be held for members of the public on April 24, at 3 p.m., in the Ministry of Foreign Relations, Teatinos 180, Conference Room, 2nd Floor. The purpose of the Council meeting is detailed below under **SUPPLEMENTARY INFORMATION**.

The meeting agenda will include a review of Chapter 19 Provisions, a progress report on projects outlined in the FTA's Environment Chapter, an overview of success stories under the 2007-2008 Work Program pursuant to the United States-Chile Environmental Cooperation Agreement ("the ECA"), a presentation of project ideas to continue with the implementation of the 2007-2008 Work Program and beyond, and a consultation between the advisory committees for Chile and the United States, La Comision Nacional del Medio Ambiente (CONAMA) and the Trade and Environment Policy Advisory Committee (TEPAC). The Department of State and USTR invite interested agencies, organizations, and members of the public to submit written comments or suggestions regarding agenda items and to attend the public session.

In preparing comments, we encourage submitters to refer to:

- The FTA's Environment Chapter including Annex 19.3, and the Final Environment Review of the FTA, available at: http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Section_Index.html.

- The ECA, available at: <http://www.state.gov/g/oes/rls/or/22185.htm>.

- Joint Declaration from the third Council meeting (October 23, 2006) at: <http://www.state.gov/g/oes/env/trade/index.htm>.

DATES: To be assured of timely consideration, comments are requested no later than April 21, 2008.

ADDRESSES: Written comments or suggestions should be submitted to both:

(1) Carmen Yee-Batista, U.S. Department of State, Bureau of Oceans, Environment, and Science, Office of Environmental Policy by electronic mail at yeebatistac@state.gov with the subject line "US-Chile EAC Meeting" or by fax to (202) 647-5947; and (2) Mara M. Burr, Deputy Assistant United States Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative by electronic mail at mburr@ustr.eop.gov with the subject line "US-Chile EAC Meetings" or by fax to (202) 395-9517.

FOR FURTHER INFORMATION CONTACT: Carmen Yee-Batista, Telephone (202) 647-6777 or Mara M. Burr, Telephone (202) 395-7320.

SUPPLEMENTARY INFORMATION: The United States-Chile FTA entered into force on January 4, 2004. Article 3 of Chapter 19 (Environment) of the FTA establishes an Environment Affairs Council, which is required to meet at least once a year to discuss the implementation of, and progress under, Chapter 19. Chapter 19 requires that meetings of the Council include a public session, unless otherwise agreed by the two governments. Under Chapter 19, the two governments agreed to undertake eight specific cooperative activities set out in Annex 19.3 of the Chapter and to negotiate a United States-Chile Environmental Cooperation Agreement to further environmental cooperative activities. The ECA entered into force on May 1, 2004 and sets out a framework for environmental cooperative activities between the two governments. Article II of the ECA establishes the United States-Chile Joint Commission for Environmental Cooperation (the "Commission"), with responsibilities that include developing and periodically reviewing a Work Program. The Commission is required to meet at least every two years. The first meetings of the Council and the Commission were held on July 22, 2004, in Santiago,

Chile, and the third meeting of the Council and second meeting of the Commission were held on October 23-24, 2006, in Santiago, Chile. At the third Council meeting, the Council discussed the implementation of Chapter 19 of the FTA with respect to public participation, progress reports on the eight cooperation projects under Chapter 19, implementation of the 2005-2006 Work Program, and elaboration of the 2007-2008 Work Program. At the upcoming fourth meeting of the Council, the Council will consider the implementation of the Chapter, review of cooperative projects, success stories under the 2007-2008 ECA Work Program, and project ideas to continue with the implementation of the 2007-2008 Work Program and beyond. At these meetings, the Council will also consider recommendations for future bilateral environmental cooperation.

The public is advised to refer to the State Department Web site at <http://www.state.gov/g/oes/env/> for further information related to the Council meeting.

Dated: March 21, 2008.

Daniel T. Fantozzi,

Director, Office of Environmental Policy, Department of State.

[FR Doc. E8-6207 Filed 3-25-08; 8:45 am]

BILLING CODE 4710-09-P

DEPARTMENT OF STATE

[Public Notice 6151]

Notice of Receipt of Application for Presidential Permit for Border Facilities Related to the Frontera Juarez Pipeline and Notice of Intent To Prepare Environmental Assessment, and Notice of Flood Plain and Wetland Involvement

AGENCY: Department of State.

ACTION: Notice of Receipt of Application for Presidential Permit for Border Facilities Related to the Frontera Juarez Pipeline and Notice of Intent To Prepare Environmental Assessment, and Notice of Flood Plain and Wetland Involvement.

The Department of State has received an application from P.M.I. Services North America ("PMI") for a Presidential permit, pursuant to Executive Order 13337 of April 30, 2004, to construct, connect, operate, and maintain facilities at the border for a 10.75-inch diameter liquid hydrocarbon (gasoline and diesel) pipeline at the U.S.-Mexico border near San Elizario, Texas, for the purpose of transporting gasoline and diesel between the United

States and Mexico. PMI seeks this authorization in connection with its Frontera Juarez Pipeline Project ("Frontera"), which is designed to transport gasoline and diesel from the Longhorn Partners Pipeline Terminal in El Paso County, Texas, to the U.S.-Mexico border near San Elizario, Texas.

PMI is a corporation duly organized under the laws of the State of Delaware. PMI is a wholly-owned subsidiary of Mexican state oil company Petroleos Mexicanos (PEMEX). According to the description in PMI's application, the proposed new border crossing would consist of a 10.75-inch diameter pipeline installed under the Rio Grande via horizontal directional drilling, which would be buried to a minimum depth of five (5) feet below ground level or five (5) feet below lowest point of river crossing. The border crossing would be part of the Frontera Project, which would consist in the U.S. of 28 miles of 10.75-inch diameter pipeline from Longhorn Partners Pipeline Terminal in El Paso County, Texas, to the U.S.-Mexico border near San Elizario, Texas.

As required by E.O. 13337, the Department of State is circulating this application to concerned federal agencies for comment.

In accordance with Section 102(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and implementing regulations promulgated by the Council on Environmental Quality (40 CFR Parts 1500-1508) and the Department of State (22 CFR Part 161), including in particular 22 CFR 161.7(c)(1), the Department of State intends to prepare an environmental assessment (EA) to determine whether an environmental impact statement will be required for this application. The Department also intends to conduct consultations on possible impacts to traditional or cultural properties with interested Native American tribes under Section 106 of the Historic Preservation Act.

The purpose of this Notice of Intent is to inform the public about the proposed action and solicit public comments. As the proposed project may involve an action in a floodplain or wetland, the EA will include a floodplain and wetlands assessment and floodplain statement of findings.

Contact: For further information, to receive a CD-ROM copy of PMI's application, or to comment on the proposed project contact Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520, telephone 202-647-4284, facsimile 202-647-1052, e-mail orlandoea2@state.gov.

Issued in Washington, DC on March 19, 2008.

Stephen J. Gallogly,

Director, Office of International Energy and Commodity Policy, Department of State.

[FR Doc. E8-6206 Filed 3-25-08; 8:45 am]

BILLING CODE 4710-07-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 6, 2007, vol. 72, no. 234, page 68950. The respondents supply information to the FAA Civil Aviation Registry's Aircraft Registration Branch in order to obtain an authorization code for access to the International Registry.

DATES: Please submit comments by April 25, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Entry Point Filing Form—International Registry.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120-0697.

Form(s): 8050-135.

Affected Public: An estimated 12,750 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 30 minutes per response.

Estimated Annual Burden Hours: An estimated 6,375 hours annually.

Abstract: The respondents supply information through the AC Form 8050-135 to the FAA Civil Aviation Registry's Aircraft Registration Branch in order to obtain an authorization code for access to the International Registry.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer,

Department of Transportation/FAA, and sent via electronic mail to:

oira_submission@omb.eop.gov or faxed to (202) 395-6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 18, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. E8-5930 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 6, 2007, vol. 72, no. 234, page 68949. This collection maintains a reservation reporting system for unscheduled instrument flight rule (IFR) arrivals at Chicago's O'Hare International Airport.

DATES: Please submit comments by April 25, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at:

Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Reservations for Unscheduled Operations at Capacity Coordinated Airports.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120-0694.

Form(s): There are no FAA Forms associated with this collection.

Affected Public: An estimated 182 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 2 minutes per response.

Estimated Annual Burden Hours: An estimated 2,204 hours annually.

Abstract: This collection maintains a reservation reporting system for unscheduled instrument flight rule (IFR) arrivals at Chicago's O'Hare International Airport. This collection implements a reservation reporting system for unscheduled IFR arrival and departure operations at New York's Kennedy and Newark's Liberty International Airports. Respondents are operators seeking approval to conduct unscheduled operations during peak hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oira_submission@omb.eop.gov or faxed to (202) 395-6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 18, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. E8-5932 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2008-12]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 15, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA-2006-25049 using any of the following methods:

- Government-wide rulemaking Web site: Go to: <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202-493-2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to: <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Docket: To read background documents or comments received, go to: <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267-7626 or Laverne Brunache (202) 267-3133,

Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 20, 2008.

Pamela Hamilton-Powell,
Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA-2006-25049.

Petitioner: American Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.619.

Description of Relief Sought: To amend American Airlines, Inc. (American), current Exemption No. 9570, which grants relief to American; American certificated dispatchers; and American pilots in command from 14 CFR 121.619 to the extent necessary to dispatch aircraft to domestic airports without designating an alternate for the destination airport where for at least 1 hour before and 1 hour after the estimated time of arrival at the destination airport the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling will be at least 1,000 feet above the airport elevation and visibility will be at least 3 statute miles, subject to certain conditions and limitations. Condition No. 3 of that exemption states, Operations under this exemption are limited to only those airports at which an operable Category I Instrument Landing System (CAT I ILS) procedure with published minimums of 200 feet and runway visual range (RVR) 2,000 or lower is available for use if needed. The amendment American seeks would revise Condition No. 3 to limit operations under this exemption to airports at which an operable CAT I ILS procedure with published minimums of 300 feet and RVR of 4,000 feet or lower is available. Additionally, American seeks to amend Condition No. 4. This condition, states, in pertinent part, that the dispatch release will contain a statement for each flight dispatched under this exemption of "ALTERNATE WEATHER EXEMPTION APPLIED. REFERENCE [insert name of appropriate document]." American wishes to revise the statement to read "ALTN WX EXEMPTION APPLIED."

[FR Doc. E8-6147 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 22, 2008, Volume 73, Number 14, Page Numbers 3800 and 3801.

This document describes two collections of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before April 25, 2008.

FOR FURTHER INFORMATION CONTACT: Larry Long, National Highway Traffic Safety Administration (NVS-211), 1200 New Jersey Ave., Washington, DC 20590. Mr. Long's telephone number is (202) 366-6281.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Consumer Complaint Information.

OMB Control Number: 2127-0008.

Type of Request: Renewal of an Existing Collection of Information.

Abstract: Under Chapter 301 of Title 49 of the United States Code, manufacturers of motor vehicles and items of motor vehicle equipment must notify owners and provide a free remedy (i.e., a recall) when it has been determined that a safety-related defect exists in the manufacturer's product. NHTSA investigates possible safety defects and may order recalls. NHTSA solicits information from vehicle owners, which is used to identify and evaluate possible safety-related defects and provide evidence of the existence of such defects.

Consumer complaint information takes the form of a Vehicle Owner's Questionnaire (VOQ), which is a paper, self-addressed mailer that consumers complete. This mailer contains owner information, product information, failed

component information, and incident information. It may also take the form of an electronic VOQ containing the same information as identified above, which can be submitted via NHTSA's Internet Web site or by calling the Department of Transportation's Auto Safety Hotline. Or, it may take the form of a consumer letter. All consumer complaint information, in addition to other sources of available information, is entered into the agency's database and reviewed by NHTSA staff to determine whether a safety-related defect trend or catastrophic failure is developing that would warrant the opening of a safety defect investigation.

Affected Public: Individuals and households.

Estimated Total Annual Burden: 8,657 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Kathleen DeMeter,

Director, Office of Defects Investigation.

[FR Doc. E8-6181 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-RSPA-2004-19856]

Pipeline Safety: Issues Related to Mechanical Couplings Used in Natural Gas Distribution Systems

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin; Corrections.

SUMMARY: PHMSA published a document in the **Federal Register** of March 4, 2008, issuing an advisory bulletin concerning failures of

mechanical couplings and related appurtenances in natural gas distribution systems. The document described certain affected pipe incorrectly and did not clearly identify the State involved in certain data.

FOR FURTHER INFORMATION CONTACT:

Richard Sanders at (405) 954-7214, or by e-mail at richard.sanders@dot.gov; or Max Kieba at (202) 493-0595, or by e-mail at max.kieba@dot.gov.

SUPPLEMENTARY INFORMATION:

Corrections

1. Because of the variations in the nature of the incidents and the approaches taken to them, PHMSA intended to describe separately the incidents and studies done in various states. In order to clarify the separation in the bulletized lists of incidents and studies, in the **Federal Register** of March 4, 2008, in FR Doc. E8-4155 correct the preamble text by adding a bullet symbol (•) in the following places:

a. On page 11696, in the second column, before the sentence "Between 1980 and 2007, seven incidents occurred in Texas."

b. On page 11697, in the first column, before the sentence "A number of other studies, tests, and repair, or replacement programs, some of them voluntary, have been conducted in other States."

2. In the **Federal Register** of March 4, 2008, in FR Doc. E8-4155, on page 11697, in the second column, in item 4 of the advisory bulletin, correct the description of the affected pipe in the first sentence to read "pipe sizes between 1/2-inch CTS (Copper Tube Size) and two-inch IPS (Iron Pipe Size)".

Issued in Washington, DC, on March 20, 2008.

William Gute,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. E8-6155 Filed 3-25-08; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veteran Affairs.

ACTION: Notice of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of

Veterans Affairs (VA) is establishing a new system of records entitled "Department of Veterans Affairs Identity Management System (VAIDMS)"—(146VA005Q3).

DATES: Comments on this new system of records must be received no later than April 25, 2008. If no public comment is received, the new system of records will become effective April 25, 2008.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026 (This is not a toll free number). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 (This is not a toll free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: VA PIV Program Manager, VA PIV Program Office, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9759 (This is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed System of Records

The Department of Veterans Affairs Identity Management System (VAIDMS) is proposing to establish a system of records that will be used to ensure that access to Federal facilities and information is restricted to authorized individuals, in accordance with Homeland Security Presidential Directive 12 (HSPD-12), which requires Federal agencies to issue uniform identification cards to eligible Federal employees and contractors and directed the National Institute of Standards and Technology (NIST) to establish a new standard for these Personal Identity Verification (PIV) cards. To comply with the directive, VA will collect, manage, and retrieve individually-identified personal information pertaining to VA employees, contractors, and affiliates who require routine, long-term logical access to VA information or information systems, and/or physical access to VA facilities to perform their jobs. Affiliates include students, researchers, residents,

Veterans Service Organization volunteers, temporary help, interns, individuals authorized to perform or use services provided in VA facilities, and individuals formerly in any of these positions. VA is promulgating this system of records following Office of Management and Budget (OMB) Directive M-05-24 guidance in accordance with 5 U.S.C. 552a(v) in the performance of providing Privacy Act guidance to Federal agencies.

The PIV card enrollment data collection process requires the applicant to provide two PIV-compliant identity documents to confirm the individual's identity. In addition, the PIV applicant's facial image and fingerprints are also captured to create a data record in the PIV Identity Management System.

HSPD-12 and the standards promulgated by NIST require that the PIV card be secure and reliable, enhance security, increase efficiency, reduce identity fraud, and protect personal privacy. HSPD-12 established four control objectives for Federal agencies to accomplish in implementing the directive:

- Issue identification credentials based on sound criteria to verify an individual's identity;
- Issue credentials that are strongly resistant to fraud, tampering, counterfeiting, and terrorist exploitation;
- Provide for rapid, electronic authentication of personal identity; and
- Issue credentials by providers whose reliability has been established through an official accreditation process.

The scope of the VA PIV Program consists of PIV card enrollment services collecting PIV applicant data; a fully integrated VA PIV systems infrastructure using a centralized VA Identity Management System (VAIDMS); and related card registration, card issuance, and card management operations.

The VA PIV enrollment process and data collection will cover all VA employees, contractors, and affiliates who require routine, long-term access to VA facilities, and information systems. The personal information collected during the enrollment process consists of data and records necessary to verify the identity of the individual applying for the PIV card. VA may, at its discretion, include short-term employees and contractors in the PIV program; therefore, these records are included in the system of records. VA shall make risk-based decisions to determine whether to issue PIV cards and to require prerequisite background checks for short-term employees,

contractors, and affiliates. The VAIDMS will collect data elements from the PIV card applicant, including full legal name, date of birth, Social Security number, organizational and employee affiliations, fingerprints, digital color photograph, work e-mail address, and phone number(s), as well additional verification and demographic information. A Card Holder Unique Identifier (CHUID) is also developed and stored in the system of records by combining several of these collected data elements to create a specific individually-identified data element uniquely linked to the PIV card holder.

A separate, yet related system of records, the VA Personnel Security File System (VAPSFs), handles PIV applicant background investigation data collection and management prior to the PIV card enrollment process. VAPSFs captures pertinent background history and fingerprint information from the PIV applicant. This background investigation effort is conducted in order to determine the eligibility of an applicant to obtain a PIV card for accessing VA resources. Together, these two systems of records will collect and manage the appropriate information to allow a PIV card to be issued to authorized VA employees, contractors, or affiliates, and to effectively manage the PIV card throughout its life cycle operations.

II. Proposed Routine Use Disclosures of Data in the System

VA is proposing to establish the following routine use disclosures of information that will be maintained in the system.

1. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services, as VA may deem practicable, for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

This routine use includes agreements that are not considered contracts under Federal procurement law. In addition, it is consistent with OMB guidance in

OMB Circular A-130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

2. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist in or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

VA's ability to respond quickly and effectively in the event of a breach of Federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

3. VA may disclose the information listed in 5 U.S.C. 7114(b)(4), to officials of labor organizations recognized under 5 U.S.C. Chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

VA must be able to provide information to unions to assist them in advancing workers' interests with respect to wages, benefits, and working conditions. This routine use does not provide the unions with any greater access to Privacy-Act-protected

information than access under section 7114(b) to information that is not protected by the Privacy Act. It simply removes the Privacy Act as a bar to the disclosure of the information at the agency's discretion.

4. VA may disclose the information to officials of the Merit Systems Protection Board (MSPB), or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

VA must be able to provide information to MSPB for it to perform duties imposed by statutes and regulations.

5. VA may disclose the information to the Equal Employment Opportunity Commission, (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission, as authorized by law or regulation.

VA must be able to provide information to EEOC for it to perform duties imposed by statutes and regulations.

6. VA may disclose the information to the Federal Labor Relations Authority (FLRA) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

VA must be able to provide information to FLRA for it to perform duties imposed by statutes and regulations.

7. VA may disclose the information to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office, made at the written request of the constituent, about whom the record is maintained.

VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

8. VA may disclose the information to the National Archives and Records Administration (NARA) or to the

General Services Administration (GSA) for records management inspections conducted under 44 U.S.C. 2904 and 2906.

VA must be able to disclose information to NARA and GSA to comply with statutory requirements to disclose information to these agencies for them to perform their records management duties.

9. VA may disclose information in this system of records to the Department of Justice (DOJ) and Office of Personnel Management (OPM), either on VA's initiative or in response to DOJ's and OPM's request for the information, after either VA, DOJ, or OPM determines that such information is relevant to DOJ's or OPM's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice or OPM is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

10. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, Tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may

only disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

III. Compatibility of the Proposed Routine Uses

Release of information from these records will be made only in accordance with the provisions of the Privacy Act of 1974. The Privacy Act of 1974 permits agencies to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information was collected. In the routine use disclosures proposed for this new VA system of records, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish an advance copy of the system notice has been sent to the appropriate Congressional Committees and to the Director of the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) (Privacy Act), as amended, and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: March 12, 2008.

Gordon H. Mansfield,
Deputy Secretary of Veterans Affairs.

146VA005Q3

SYSTEM NAME:

Department of Veterans Affairs Identity Management System (VAIDMS)

SYSTEM LOCATION:

Primary location: Electronic records are kept at the VA Data Center at Falling Waters, WV. Secondary locations: VA Data Center at Hines, IL, and Austin Automation Center, Austin, TX. Paper records are kept at the individual VA field site locations, within the local human resources offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who require routine, long-term access to VA Federal facilities, and/or information technology systems to perform their jobs, namely:

1. VA employees;
2. Contractors and subcontractors;
3. Affiliates, including students, researchers, residents, Veterans Service Organization volunteers, temporary help, and interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained, on individuals issued PIV cards by VA, include the following data fields: Full legal name, Social Security number; date of birth; signature; facial image (photograph); fingerprints; hair color; eye color; height; weight; organization/office of assignment; company name; telephone number; Personal Identity Verification (PIV) card issue and expiration dates; personal identification number (PIN); results of background investigation; PIV card request form; PIV registrar approval signature; PIV card serial number; PIV card expiration date; copies of documents used to verify PIV card applicant identification, and/or information derived from those documents, such as document title, document issuing authority, document number, document expiration date, document other information); level of national security clearance and expiration date; computer system user e-mail address; user access and permission rights, authentication certificates; digital signature information, and card holder unique identifier (CHUID).

Records maintained on card holders, entering VA facilities or using VA computer systems, are verified during the life cycle of audit records to include: Name, PIV Card serial number; date, time, and location of entry and exit; contractor company name (if applicable); level of national security clearance and expiration date; digital signature information; computer access dates, times, and locations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 38 U.S.C. 501; 40 U.S.C. 11331; 44 U.S.C. 3544; Executive Order 9397; Homeland Security Presidential Directive 12; Federal Information Processing Standard 201-1.

PURPOSE:

The information collected in this system of records is used to a) ensure the safety and security of VA facilities, systems, or information, (b) verify that all persons entering Federal facilities, using Federal information resources, or accessing sensitive or classified information are authorized to do so; (c) track and control PIV cards issued to persons entering and exiting the facilities, using systems, or accessing sensitive or classified information, including patient records. This system of records applies to all VA Federal employment and contract positions, and may include VA employees, contractors, and affiliates to the extent their duties require access to VA Federal facilities and/or information systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

2. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, 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 (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist in or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

3. VA may disclose the information listed in 5 U.S.C. 7114(b)(4) to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

4. VA may disclose the information to officials of the Merit Systems Protection Board, or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions,

promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

5. VA may disclose the information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation.

6. VA may disclose the information to the Federal Labor Relations Authority (FLRA) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

7. VA may disclose the information to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

8. VA may disclose the information to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

9. VA may disclose information in this system of records to the Department of Justice (DOJ) and Office Personnel Management (OPM), either on VA's initiative or in response to DOJ's and OPM's request for the information, after either VA, DOJ, or OPM determines that such information is relevant to DOJ's or OPM's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the DOJ or OPM is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

10. VA may disclose on its own initiative any information in this system, except the names and home

addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper in locked containers and electronically in secure locations.

RETRIEVABILITY:

Records may be retrieved by name of the individual, Cardholder Unique Identification (CHUID) Number, Social Security Number (SSN), and/or by any other unique individual identifier.

SAFEGUARDS:

Paper records are kept in locked cabinets in secure local VA facilities and access to them is restricted to individuals whose role requires use of the PIV records. Electronic records are kept in the PIV Identity Management System servers maintained at VA Data Centers in Falling Waters; WV, Hines, IL; and Austin Automation Data Center, Austin, TX. Access to the records is restricted to those with a specific role in the PIV process that requires access to PIV applicant data in order to perform their duties, and who have been given a PIV card for authentication, and a password to access the system of records. The computer servers in which records are stored are located in secure, monitored facilities.

Electronic records at the Data Centers are maintained in a secure, password protected electronic system that utilizes security hardware and software to include: encryption, multiple firewalls, active intruder detection, and role-based access controls.

A Privacy Act Warning Notice appears on the Web-based PIV Registration Portal screen when records containing information on individuals

are first displayed. Data exchanged between the PIV servers located in VA data centers, and PC computer equipment at PIV registration offices are encrypted using SSL encryption (HTTPS) over commonly available Internet browsers. Backup tapes are stored in a locked and controlled room in a secure, off-site location.

An audit trail is maintained and reviewed periodically to identify unauthorized attempts to access, and actual unauthorized access. Persons given roles in the PIV process must complete training specific to their roles to ensure they are knowledgeable about how to protect individually-identified information.

RETENTION AND DISPOSAL:

Records relating to persons covered by this system are retained in accordance with General Records Schedule 18, Item 17. Unless retained for specific, ongoing security investigations, and in accordance with NARA, all of the PIV collected data will be retained for a minimum of 7.5 years beyond the term of employment, unless otherwise directed.

In accordance with HSPD-12, PIV Cards are deactivated within 18 hours from the notification time for cardholder separation, loss of card, or expiration. The information on PIV Cards is maintained in accordance with General Records Schedule 11, Item 4. PIV Cards are destroyed by shredding, typically within 90 days after deactivation.

SYSTEM MANAGER AND ADDRESS:

VA PIV Program Manager, Office of Human Resources (005Q3), Department of Veterans Affairs, 810 Vermont Ave., NW., Room B-11, Washington, DC 20420; telephone (202) 461-9759 (This is not a toll free number).

NOTIFICATION PROCEDURES:

An individual can determine if this system contains a record pertaining to him/her by sending a request in writing, signed, to the Systems Manager. When requesting notification of or access to records covered by this Notice, an individual should provide his/her full name, date of birth, agency name, and work location. An individual requesting notification of records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to access, such as a government-issued photo ID. Individuals requesting notification via mail or telephone must furnish, at minimum, name, date of birth, Social Security number, and home address in order to establish identity.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURE:

Same as Notification procedures above. Requesters should also reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction along with supporting justification showing why the record is not accurate, timely, relevant, or complete.

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources including the PIV applicant (employee, contractor, or affiliate); the VA Active Directory; PIV applicant supervisor; existing VA personnel file; PIV-compliant identity documents; former sponsoring agency; other Federal agencies; contract employer; former employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-6120 Filed 3-25-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Amendment of System of Records "Health Care Provider Credentialing and Privileging Records—VA."

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. The Department of Veterans Affairs (VA) is amending the system of records, known as "Health Care Provider Credentialing and Privileging Records—VA" (77VA10Q) as set forth in the **Federal Register** 55 FR 30790 dated 12/6/01. VA is amending the system notice by revising the paragraphs on System Location, Categories of Records in the System, Routine Uses, System Manager(s) and Address, and Record Source Categories. VA is republishing the system notice in its entirety at this time.

DATES: Comments on the amendment of this system of records must be received no later than April 25, 2008. If no public comment is received, the new system will become effective April 25, 2008.

ADDRESSES: Written comments may be submitted through <http://>

www.Regulations.gov; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (704) 245-2492.

SUPPLEMENTARY INFORMATION: VHA is responsible for providing medical care under chapter 17 of title 38 United States Code. As part of providing quality health care, VHA engages in the credentialing (verification of education, training, and qualifications) of the practitioners delivering this care. VHA has a centralized electronic data warehouse (VetPro) to store credentialing health care provider data and the images of the primary source verification of health care providers' credentials. The previously reported joint credentialing and privileging project between the VHA and the Department of Health and Human Services, Health Resources and Services Administration (DHHS/HRSA) was terminated in October 2003, and the VetPro system in its entirety returned to VA.

A secondary information source is one that provides credentialing data that are derived from a primary source, i.e., National Practitioner Data Bank (NPDB), Federation of State Medical Boards (FSMB), etc. The NPDB manages the Health Integrity and Protection Data Bank (HIPDB). The final regulations for the HIPDB are published in 45 CFR part 61, which is a national health care fraud and abuse control program. It is a national data bank to receive and disclose certain final, adverse actions against health care practitioners, providers and suppliers. VHA queries the HIPDB for all new appointments as well as part of the re-privileging process for licensed independent practitioners previously-privileged by VHA in the form of a combined query with the NPDB. As a secondary information source, information obtained from the HIPDB may require additional

supporting documentation either from a primary source or additional secondary sources for corroboration. To assure provider identification, and appropriate matching of information entered into an electronic system, VHA captures unique provider identifiers such as name, Social Security number, national provider identifier, and unique physician identification number that VHA uses to ensure the credentialing information is appropriately associated to the correct provider. In addition to capturing the national provider identifier (NPI), VA will capture the associated taxonomy codes.

Validated credentialing information may be shared with other established data systems such as Veterans Information Systems Technology Architecture (Vista) and Decision Support System (DSS). The purpose of sharing credentialing information and associated data is to decrease the duplicative effort of both providers and staff in gathering the same information multiple times for inclusion in different databases used in VHA. These data are required for such activities as emergency medical responses in times of national disaster, telemedicine, and medical care cost recovery and will be disclosed only to the extent it is reasonably necessary to assist in the accomplishment of statutory or government-wide administrative mandates.

Amendments to the System Location include that electronic records may be maintained by VHA Office of Quality and Performance (OQP), a component thereof, or contractor or subcontractor of VHA/OQP. The Category of Records in the System is amended to more clearly specify the accessing and reporting to the HIPDB, and the FSMB.

Routine uses 17 and 18 are amended to incorporate querying and reporting obligations for the HIPDB. The System Manager(s) and Addresses are amended to reflect that records may be maintained by human resources management offices in addition to previously identified locations. The System Manager(s) and Addresses are also being amended to reflect the termination of the agreement between the DHHS/HRSA and VA/VHA in October 2003. Record Source Categories is being amended to include the HIPDB.

Routine use 21 was added for the purpose of disclosure to OPP will determine that: (A) The disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) the study purpose (1) cannot be reasonably accomplished unless the record is provided in individually-identifiable

form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; and (C) the recipient has agreed that (1) it will establish (if it hasn't already) reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) will remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the study, unless the recipient has presented adequate justification of a study or health nature for retaining such information, and (3) will make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another study, under these same conditions, and only with prior written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the study, if information that would enable veterans or their dependents to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law. Prior to disclosure, OPP will secure a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions.

Routine use 21 was added to disclose information to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement. Routine use 22 was added in the event of mitigating risk and or harm.

Routine use 23 was added to disclose information to other Federal agencies in the event of assisting such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

An amendment was made to Routine use 8 to disclose information to the Department of Justice, either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the DoJ is the use of the information is compatible with the purpose for which VA collected the records. Routine use 14 was amended to disclose information to officials of the Merit Systems Protection Board, or the Office of Special Counsel.

VA is revising and updating the systems of record notice 77VA10Q, "Health Care Provider Credentialing and Privileging Records—VA."

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (61 FR 6428), February 20, 1996.

Approved: March 12, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

77VA10Q

SYSTEM NAME:

Health Care Provider Credentialing and Privileging Records—VA.

SYSTEM LOCATION:

Records are maintained at each Department of Veterans Affairs (VA) health care facility. Address locations for VA facilities are listed in VA Appendix 1 biennial publication of VA system of records. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 and/or Veterans Integrated Service Network (VISN) Offices. Records for those health care providers who are contractors in a VA health care facility, or to VA for the delivery of health care to veterans and are credentialed by the contractor in accordance with Veterans Health Administration (VHA) policy, where credentialing information is received by VHA facilities, it will be maintained in accordance with this notice and VHA policy. Electronic copies of records may be maintained by VHA Office of Quality and Performance (OPQ), a component thereof, or a contractor or subcontractor of VHA/OQP. Back-up copies of the electronic data warehouse are maintained at off-site locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning health care providers currently or formerly employed or otherwise utilized by VHA and individuals who apply to VHA for employment and are considered for employment or appointment as health care providers. These records will include information concerning individuals who through a contractual or other agreement may be, or are, providing health care to VA patients. This may include, but is not limited to,

audiologists, dentists, dietitians, expanded-function dental auxiliaries, licensed practical or vocational nurses, nuclear medicine technologists, nurse anesthetists, nurse practitioners, registered nurses, occupational therapists, optometrists, clinical pharmacists, licensed physical therapists, physician assistants, physicians, podiatrists, psychologists, registered respiratory therapists, certified respiratory therapy technicians, diagnostic and therapeutic radiology technologists, social workers, and speech pathologists.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system consist of information related to:

(1) The credentialing (the review and verification of an individual's qualifications for employment or utilization, which includes licensure, registration or certification, professional education and training, employment history, experience, appraisals of past performance, health status, etc.) of applicants who are considered for employment and/or appointment, for providing health services under a contract or other agreement, and/or for appointment to the professional staff at a VHA health care facility.

(2) The privileging (the process of reviewing and granting or denying a provider's request for clinical privileges to provide medical or other patient care services, within well-defined limits, which are based on an individual's professional license, registration or certification, experience, training, competence, health status, ability, and clinical judgment) health care providers who are permitted by law and by the medical facility to provide patient care independently and individuals whose duties and responsibilities are determined to be beyond the normal scope of activities for their profession;

(3) The periodic reappraisal of health care providers' professional credentials and the reevaluation of the clinical competence of providers who have been granted clinical privileges; and/or

(4) Records generated as part or result of accessing and reporting to the National Practitioner Data Bank (NPDB), the Health Integrity and Protection Data Bank, and the Federation of State Medical Boards (FSMB).

The records may include individually identifiable information (e.g., name, date of birth, gender, Social Security number, national provider number and associated taxonomy codes, and/or other personal identification number), address information (e.g., home and/or mailing address, home telephone number, e-mail address, facsimile

number), biometric data, information related to education and training (e.g., name of medical or professional school attended and date of graduation, name of training program, type of training, dates attended, and date of completion). The records may also include information related to: the individual's license, registration or certification by a State licensing board and/or national certifying body (e.g., number, expiration date, name and address of issuing office, status including any actions taken by the issuing office or any disciplinary board to include previous or current restrictions, suspensions, limitations, or revocations); citizenship; honors and awards; type of appointment or utilization; service/product line; professional society membership; professional performance, experience, and judgment (e.g., documents reflecting work experience, appraisals of past and current performance and potential); educational qualifications (e.g., name and address of institution, level achieved, transcript, information related to continuing education); Drug Enforcement Administration and/or State controlled dangerous substance certification (e.g., current status, any revocations, suspensions, limitations, restrictions); information about mental and physical status; evaluation of clinical and/or technical skills; involvement in any administrative, professional or judicial proceedings, whether involving VA or not, in which professional malpractice on the individual's part is or was alleged; any actions, whether involving VA or not, which result in the limitation, reduction, revocation, or acceptance of surrender or restriction of the individual's clinical privileges; and, clinical performance information that is collected and used to support a determination of an individual's request for clinical privileges. Some information that is included in the record may be duplicated in an employee's official personnel folder.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38 U.S.C. section 501(a) and section 7304(a)(2).

PURPOSE(S):

The information may be used for: Verifying the individual's credentials and qualifications for employment or utilization, appointment to the professional staff, and/or clinical privileges; advising prospective health care entity employers, health care professional licensing or monitoring bodies, the NPDB, or similar entities or activities of individuals covered by this system; accreditation of a facility by an

entity such as the Joint Commission; audits, reviews and investigations conducted by staff of the health care facility, the Veterans Integrated Service Network (VISN) Directors and Division Offices, VA Central Office, VHA program offices, and the VA Office of Inspector General; law enforcement investigations; quality assurance audits, reviews and investigations; personnel management and evaluations; employee ratings and performance evaluations; and, employee disciplinary or other adverse action, including discharge. The records and information may be used for statistical analysis, to produce various management reports, evaluate services, collection, distribution and utilization of resources, and provide clinical and administrative support to patient medical care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee, the issuance or reappraisal of clinical privileges, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefits; or in response to scarce or emergency needs of the Department or other entities when specific skills are required.

2. A record from this system of records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of VA, information in connection with the hiring of an employee, appointment to the professional staff, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefit by the agency, or the lawful statutory or administrative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision; or at the initiative of VA, to the extent the information is relevant and necessary to an investigative purpose of the agency.

3. Disclosure may be made to a Congressional office from the record or an individual in response to an inquiry

from the Congressional office made at the request of that individual.

4. Disclosure may be made to NARA (National Archives and Records Administration) in records management inspections conducted under authority of title 44 United States Code.

5. Information from this system of records may be disclosed to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, utilization, appointment, retention or termination of individuals covered by this system or to inform a Federal agency or licensing boards or the appropriate non-government entities about the health care practices of a currently employed, appointed, otherwise utilized, terminated, resigned, or retired health care employee or other individuals covered by this system whose professional health care activity so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

6. Information may be disclosed to non-Federal sector (i.e., State, or local governments) agencies, organizations, boards, bureaus, or commissions (e.g., the Joint Commission). Such disclosures may be made only when: (1) The records are properly constituted in accordance with VA requirements; (2) the records are accurate, relevant, timely, and complete; and (3) the disclosure is in the best interest of the Government (e.g., to obtain accreditation or other approval rating). When cooperation with the non-Federal sector entity, through the exchange of individual records, directly benefits VA's completion of its mission, enhances personnel management functions, or increases the public confidence in VA's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving entity is to be furnished.

7. Information may be disclosed to a State or national certifying body which

has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

8. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

9. Hiring, appointment, performance, or other personnel credentialing related information may be disclosed to any facility or agent with which there is, or there is proposed to be, an affiliation, sharing agreement, partnership, contract, or similar arrangement, where required for establishing, maintaining, or expanding any such relationship.

10. Information concerning a health care provider's professional qualifications and clinical privileges may be disclosed to a VA patient, or the representative or guardian of a patient who due to physical or mental incapacity lacks sufficient understanding and/or legal capacity to make decisions concerning his/her medical care, who is receiving or contemplating receiving medical or other patient care services from the provider when the information is needed by the patient or the patient's representative or guardian in order to make a decision related to the initiation of treatment, continuation or discontinuation of treatment, or receiving a specific treatment that is proposed or planned by the provider. Disclosure will be limited to

information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history, and current clinical privileges.

11. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

12. To disclose to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

13. To disclose to the VA-appointed representative of an employee all notices, determinations, decision, or other written communications issued to the employee in connection with an examination ordered by VA under fitness-for-duty examination procedures or Agency-filed disability retirement procedures.

14. To disclose information to officials of the Merit Systems Protection Board, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

15. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of

alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or the other functions of the Commission as authorized by law or regulation.

16. To disclose the information listed in 5 U.S.C. 7114(b)(4) to officials of labor organizations recognized under 5 U.S.C., chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

17. Identifying information in this system, including name, address, Social Security number and other information as is reasonably necessary to identify such individual, may be disclosed to the NPDB and the HIPDB at the time of hiring, appointment, utilization, and/or clinical privileging/reprivileging of physicians, dentists and other health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, appointment, utilization, privileging/reprivileging, retention or termination of the individual.

18. Relevant information from this system of records may be disclosed to the NPDB, HIPDB, and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

19. In response to a request about a specifically identified individual covered by this system from a

prospective Federal or non-Federal health care entity employer, the following information may be disclosed: (a) Relevant information concerning the individual's professional employment history including the clinical privileges held by the individual; (b) relevant information concerning a final decision that results in a voluntary or involuntary limitation, reduction or loss of clinical privileges; and (c) relevant information concerning any payment that is made in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim and, when through a peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, and/or professional misconduct has been assigned to the individual.

20. Disclosure may be made to any Federal, State, local, tribal or private entity in response to a request concerning a specific provider for the purposes of credentialing providers who provide health care at multiple sites or move between sites. Such disclosures may be made only when: (1) The records are properly constituted in accordance with VA requirements; (2) the records are accurate, relevant, timely, and complete; and (3) disclosure is in the best interests of the Government (i.e., to meet the requirements of contracts, sharing agreements, partnerships, etc.). When exchange of credentialing information through the exchange of individual records, directly benefits VA's completion of its mission, enhances public confidence in VA's or Federal Government's role in the delivery of health care, then the best interests of the Government are served.

21. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

22. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

23. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper documents or in electronic format. Information included in the record may be stored on microfilm, magnetic tape or disk. Records are maintained at the employing VHA health care facility. If the individual transfers to another VHA health care facility, the record is transferred to the new location, if appropriate.

RETRIEVABILITY:

Records are retrieved by the names and Social Security number or other assigned identifiers, e.g., the National Provider Identifier (NPI), of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas in VA health care facilities is restricted to VA employees on a "need to know" basis; strict control measures are enforced to ensure that disclosure to

these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the health care facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer room within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated data processing peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the Veterans Information Systems Technology Architecture (VistA) system may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file that is needed in the performance of their official duties.

3. Access to records in VA Central Office and the VISN directors and division offices is only authorized to VA personnel on a "need-to-know" basis. There is limited access to the building with visitor control by security personnel.

4. The automated system is Internet enabled and will conform to all applicable Federal Regulations concerning information security. The automated system is protected by a generalized security facility and by specific security techniques used within the application that accesses the data file and may include individually unique passwords/codes and may utilize Public Key Infrastructure (PKI) personal certificates. Both physical and system security measures will meet or exceed those required to provide an adequate level of protection for host systems. Access to file information is limited to only that information in the file that is needed in the performance of official duties. Access to computer rooms is restricted generally by appropriate locking devices to authorized operational personnel. Information submitted to the automated electronic system is afforded the same protections as the data that are maintained in the original files. Remote on-line access from other agencies to the data storage site is controlled in the same manner. Access to the electronic data is supported by encryption and the Internet server is insulated by a firewall.

RETENTION AND DISPOSAL:

Paper records are retired to the VA Records Center and Vault (VA RC&V) 3 years after the individual separates from VA employment or when no longer utilized by VA (in some cases, records may be maintained at the facility for a longer period of time) and are destroyed 30 years after separation. Paper records for applicants who are not selected for VA employment or appointment are destroyed 2 years after non-selection or when no longer needed for reference, whichever is sooner. Electronic records are transferred to the Director, Credentialing and Privileging Program, Office of Quality and Performance, VA Central Office, when the provider leaves the facility. Information stored on electronic storage media is maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Director, Credentialing and Privileging Program, Office of Quality and Performance (10Q), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Officials maintaining the system: (1) The chief of staff at the VA health care facility where the provider made application, is employed, or otherwise utilized; (2) the credentialing coordinator of the VA health care facility for individuals who made application for employment or other utilization, or providers currently or previously employed or otherwise utilized at; (3) human resources management offices of the VA health care facility for individuals who made application for employment or other utilization, or providers currently or previously employed or otherwise utilized; (4) VA Central Office or at a VISN location; The electronic data will be maintained by VHA/OQP, a component thereof, or a contractor or subcontractor of VHA/OQP.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they made application for employment or appointment, or are or were employed. Inquiries should include the employee's full name, Social Security number, date of application for employment or appointment or dates of employment or appointment, and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they made application for employment or appointment, or are or were employed.

CONTESTING RECORDS PROCEDURES:

(See Record Access Procedures).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the applicant/employee, or obtained from State licensing boards, Federation of State Medical Boards, National Council of State Boards of Nursing, National Practitioner Data Bank, Health Integrity and Protection Data Bank, professional societies, national certifying bodies, current or previous employers, other health care facilities and staff, references, educational institutions, medical schools, VA staff, patient, visitors, and VA patient medical records.

[FR Doc. E8-6143 Filed 3-25-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS**Privacy Act of 1974; System of Records**

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment of Systems of Records Notice "National Patient Databases-VA."

SUMMARY: As required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled "National Patient Databases-VA" (121VA19) as set forth in 69 FR 18436. VA is amending the system of records by revising the System Location, Categories of Records in the System, Purpose(s), Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses, and Appendix 4. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than April 25, 2008. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective April 25, 2008.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted through www.Regulations.gov; by mail

or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; by fax to (202) 273-9026; or by e-mail to: "VAregulations@mail.va.gov". All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at: <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Stephania H. Putt, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, telephone (704) 245-2492.

SUPPLEMENTARY INFORMATION:

Background: VHA is the largest health care provider in the country. In order to maintain this organization, VHA collects health care information from its local facilities to evaluate quality of services, clinical resource utilization, and patient safety, as well as to distribute medical information, such as alerts or recalls, track specific diseases, and monitor patients. National-level information is also needed for other activities, such as medical research and the development of National Best Clinical Practice Guidelines and National Quality Standards. VHA gathers this information from a wide variety of sources, including directly from a veteran; from information systems located at VHA medical centers, Veterans Integrated Service Networks (VISN), other VHA facilities, such as the Health Eligibility Center; and Federal departments and agencies such as the U.S. Department of Defense and the Food and Drug Administration. As the data is collected, VHA stores it in several national patient databases.

In this system of records the Category of Records in the System is amended to reflect the data Office of Quality and Performance (OQP) is collecting, and to include the Survey of the Healthcare Experiences of Patients and External Peer Review data capture. These data include any patient-level records created for evaluation as directed by the VHA Performance Management Program or accreditation purposes as defined by the Joint Commission. This information is collected so that OQP can assess, without organizational bias, the adherence of its treatment centers to

established clinical protocol for providing care to veterans and to monitor the satisfaction of its patient customers.

The Purpose in this system of records is being amended to reflect that the records and information may be used for statistical analysis to produce various management, workload tracking, and follow-up reports; to track and evaluate the ordering and delivery of equipment, services and patient care; for the planning, distribution and utilization of resources; to monitor the performance of Veterans Integrated Service Networks (VISN); and to allocate clinical and administrative support to patient medical care. The data may be used for VA's extensive research programs in accord with VA policy. In addition, the data may be used to assist in workload allocation for patient treatment services including provider panel management, nursing care, clinic appointments, surgery, prescription processing, diagnostic and therapeutic procedures; to plan and schedule training activities for employees; for audits, reviews and investigations conducted by the Network Directors Office and VA Central Office; for quality assurance audits, reviews and investigations; for law enforcement investigations; and for personnel management, evaluation and employee ratings, and performance evaluations. Survey data will be collected for the purpose of measuring and monitoring National, VISN and Facility-Level performance on VHA's Veteran Health Care Service Standards (VHSS). The VHSS are designed to measure levels of patient satisfaction in areas that patients have defined as important in receiving quality, patient-centered healthcare. Results of the survey data analysis are shared throughout the VHA system. The External Peer Review Program (EPRP) data is collected in order to provide medical centers and outpatient clinics with diagnosis and procedure-specific quality of care information. EPRP is a contracted review of care, specifically designated to collect data to be used to improve the quality of care.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses is being amended to reflect the addition of protecting 38 U.S.C. 5705 Quality Assurance Records, which may not be disclosed under a routine use unless there is also specific statutory authority permitting the disclosure. Routine uses numbers 1, 5, 10, 12, 13, 14, 15, and 17 have been revised for ease of readability and clarification.

Routine use 19 was added to allow for the disclosure of information to another

Federal agency for the purpose of conducting research.

Routine use 20 was added to allow for the disclosure of limited identification information to another Federal agency in order to obtain information to carry out any purpose outlined in this system of records.

Routine use number 21 was added to allow for records to be disclosed to appropriate agencies, entities, and persons under the following circumstances: when (1) it is suspected or confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, 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 (3) the disclosure is made to such agencies, entities, and persons who are 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. This routine use allows disclosure by the agency to respond to a suspected or confirmed data breach, including the conduct of any risks analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

Routine use 22 was added to accommodate the disclosure of Primary Care Management Module (PCMM) data to the general public.

Appendix 4 has been amended to include Cardiac Assessment Tracking and Reporting for Cardiac Cauterization Laboratories, Corporate Data Warehouse, CMOP Centralized Database System, Bidirectional Health Information Exchange, Financial Clinical Data Mart, Care Management Information System, Parkinson's Disease Research, Education and Clinical Centers Registry, Pharmacy Benefits Management, VA Vital Status File, Short Form Health Survey for Veterans and Office of Quality Performance Data Center. Also, the KLF Menu was renamed to Veterans Integrated Service Network Support Service Center Database. Immunology Case Registry was removed and Clinical Case Registry was changed to Registries to represent the Immunology Case Registry (ICR) and Hepatitis C. There was also removal of

the National Patient Care Database (NPCD), Patient Treatment File (PTF) and the National Health Care Practitioner Database (NHCPD) which are now entered as a single system called National Medical Information System (NMIS).

The notice of amendment and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: March 12, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

121VA19

SYSTEM NAME:

National Patient Databases—VA.

SYSTEM LOCATION:

Records are maintained at Department of Veterans Affairs (VA) medical centers, VA data processing centers, veterans integrated service networks (VISN) and office of information (OI) field offices. Address location for each VA national patient database is listed in VA Appendix 4 at the end of this document.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records contain information for all individuals (1) Receiving health care from the Veterans Health Administration (VHA), and (2) Providing the health care. Individuals encompass veterans and their immediate family members, members of the armed services, current and former employees, trainees, contractors, sub-contractors, consultants, volunteers, and other individuals working collaboratively with VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information and health information related to:

1. Patient medical record abstract information including information from Patient Medical Record—VA (24VA19).
2. Identifying information (e.g., name, birth date, death date, admission date, discharge date, gender, Social Security number, taxpayer identification number); address information (e.g., home and/or mailing address, home telephone number, emergency contact information such as name, address, telephone number, and relationship); prosthetic and sensory aid serial numbers; medical record numbers; integration control numbers;

information related to medical examination or treatment (e.g., location of VA medical facility providing examination or treatment, treatment dates, medical conditions treated or noted on examination); information related to military service and status;

3. Medical benefit and eligibility information;

4. Patient aggregate workload data such as admissions, discharges, and outpatient visits; resource utilization such as laboratory tests, x-rays;

5. Patient Satisfaction Survey Data which include questions and responses; and

6. External Peer Review Program (EPRP) data capture.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 501.

PURPOSE(S):

The records and information may be used for statistical analysis to produce various management, workload tracking, and follow-up reports; to track and evaluate the ordering and delivery of equipment, services and patient care; for the planning, distribution and utilization of resources; to monitor the performance of Veterans Integrated Service Networks (VISN); and to allocate clinical and administrative support to patient medical care. The data may be used for VA's extensive research programs in accord with VA policy. In addition, the data may be used to assist in workload allocation for patient treatment services including provider panel management, nursing care, clinic appointments, surgery, prescription processing, diagnostic and therapeutic procedures; to plan and schedule training activities for employees; for audits, reviews and investigations conducted by the network directors office and VA Central Office; for quality assurance audits, reviews and investigations; for law enforcement investigations; and for personnel management, evaluation and employee ratings, and performance evaluations. Survey data will be collected for the purpose of measuring and monitoring national, VISN and facility-Level performance on VHA's Veteran Health Care Service Standards (VHSS) pursuant to Executive Order 12862 and the Veterans Health Administration Customer Service Standards Directive. The VHSS are designed to measure levels of patient satisfaction in areas that patients have defined as important in receiving quality, patient-centered healthcare. Results of the survey data analysis are shared throughout the VHA system. The External Peer Review

Program (EPRP) data are collected in order to provide medical centers and outpatient clinics with diagnosis and procedure-specific quality of care information. EPRP is a contracted review of care, specifically designated to collect data to be used to improve the quality of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus; information protected by 38 U.S.C. 5705, i.e., quality assurance records; or information protected by 45 C.F.R. Parts 160 and 164, i.e., individually identifiable health information, such information cannot be disclosed under a routine use unless there is also specific statutory authority permitting the disclosure. VA may disclose protected health information pursuant to the following routine uses where required or permitted by law.

1. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. Disclosure may be made to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested), when necessary to obtain information relevant to an individual's eligibility, care history, or other benefits.

3. Disclosure may be made to an agency in the executive, legislative, or judicial branch, or the District of

Columbia government in response to its request or at the initiation of VA, in connection with disease tracking, patient outcomes or other health information required for program accountability.

4. Disclosure may be made to National Archives and Records Administration (NARA) for it to perform its records management inspections responsibilities in its role as Archivist of United States under authority of title 44 United States Code (USC).

5. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

6. Records from this system of records may be disclosed to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity that maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the agency to obtain information relevant to an agency decision concerning the hiring, retention or termination of an employee.

7. Records from this system of records may be disclosed to inform a Federal agency, licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews but only to the extent that the information is necessary and relevant to the review.

9. Disclosure may be made to a national certifying body that has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

10. Records from this system that contain information listed in 5 U.S.C. 7114(b)(4) may be disclosed to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

11. Disclosure may be made to the representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

12. VA may disclose information to officials of the Merit Systems Protection Board, or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

13. VA may disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation.

14. VA may disclose information to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment

of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

15. Disclosure of medical record data, excluding name and address, unless name and address are furnished by the requester, may be made to non-Federal research facilities for research purposes determined to be necessary and proper when approved in accordance with VA policy.

16. Disclosure of name(s) and address(es) of present or former personnel of the Armed Services, and/or their dependents, may be made to: (a) A Federal department or agency, at the written request of the head or designee of that agency; or (b) directly to a contractor or subcontractor of a Federal department or agency, for the purpose of conducting Federal research necessary to accomplish a statutory purpose of an agency. When disclosure of this information is made directly to a contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

17. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

18. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

19. VA may disclose information to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that

agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and the VHA Office of Information (OI) has determined prior to the disclosure that VHA data handling requirements are satisfied.

20. Disclosure of limited individual identification information may be made to another Federal agency for the purpose of matching and acquiring information held by that agency for VHA to use for the purposes stated for this system of records.

21. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

22. On its own initiative, the VA may disclose to the general public via an Internet Website, PCMM information, including the names of its providers, provider panel sizes and reports on provider performance measures of quality when approved in accordance with VA policy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic storage media including magnetic tape, disk, laser optical media.

RETRIEVABILITY:

Records are retrieved by name, Social Security number or other assigned

identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to and use of national patient databases are limited to those persons whose official duties require such access, and VA has established security procedures to ensure that access is appropriately limited. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually unique codes and passwords. VA provides information security training to all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality.

2. VA maintains Business Associate Agreements (BAA) and Non-Disclosure Agreements with contracted resources in order to maintain confidentiality of the information.

3. Physical access to computer rooms housing national patient databases is restricted to authorized staff and protected by a variety of security devices. Unauthorized employees, contractors, and other staff are not allowed in computer rooms. The Federal Protective Service or other security personnel provide physical security for the buildings housing computer rooms and data centers.

4. Data transmissions between operational systems and national patient databases maintained by this system of record are protected by state-of-the-art telecommunication software and hardware. This may include firewalls, encryption, and other security measures necessary to safeguard data as it travels across the VA Wide Area Network. Data may be transmitted via a password-protected spreadsheet and placed on the secured share point Web portal by the user that has been provided access to their secure file. Data can only be accessed by authorized personnel from each facility within the Polytrauma System of Care and the Physical Medicine and Rehabilitation Program Office.

5. In most cases, copies of back-up computer files are maintained at off-site locations.

RETENTION AND DISPOSAL:

The records are disposed of in accordance with GRS 20, item 4. Item 4 provides for deletion of data files when the agency determines that the files are no longer needed for administrative, legal, audit, or other operational purposes.

SYSTEMS AND MANAGER(S) AND ADDRESS:
 Officials responsible for policies and procedures; Chief Information Officer (19), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Officials maintaining this system of records; Director, National Data Systems (19F4), Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.

NOTIFICATION PROCEDURE:
 Individuals who wish to determine whether this system of records contains information about them should contact the Director of National Data Systems (19F4), Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772. Inquiries should include the person's full name, Social Security number, location and dates of employment or

location and dates of treatment, and their return address.

RECORD ACCESS PROCEDURE:
 Individuals seeking information regarding access to and contesting of records in this system may write or call the Director of National Data Systems (19F4), Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772, or call the VA Austin Automation Center Help Desk and ask to speak with the VHA Director of National Data Systems at 512-326-6780.

CONTESTING RECORD PROCEDURES:
 (See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:
 Information in this system of records is provided by veterans, VA employees,

VA computer systems, Veterans Health Information Systems and Technology Architecture (VistA), VA medical centers, VA Health Eligibility Center, VA program offices, VISNs, VA Austin Automation Center, the Food and Drug Administration, the Department of Defense, Survey of Healthcare Experiences of Patients, External Peer Review Program, and the following Systems Of Records: "Patient Medical Records—VA" (24VA19), "National Prosthetics Patient Database—VA" (33VA113), "Healthcare Eligibility Records—VA" (89VA16), VA Veterans Benefits Administration automated record systems (including the Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23)), and subsequent iterations of those systems of records.

VA APPENDIX 4

Database name	Location
Addiction Severity Index	Veteran Affairs Medical Center, 7180 Highland Drive, Pittsburgh, PA 15206.
Bidirectional Health Information Exchange	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Cardiac Assessment Tracking and Reporting for Cardiac Cauterization Laboratories.	VA Medical Center, 1055 Clermont Street, Denver, CO.
Care Management Information System	Veterans Affairs Medical Center, University and Woodland Aves., Philadelphia, PA 19104.
Clinical Case Registries	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
CMOP Centralized Database System	Southwest CMOP, 3675 East Britannia Drive, Tucson, AZ 85706.
Continuous Improvement in Cardiac Surgery	Veteran Affairs Medical Center, 820 Clermont Street, Denver, CO 80220.
Corporate Data Warehouse	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Creutzfeldt-Jakob Disease Lookback Dataset	Veteran Affairs Medical Center, 3200 Vine St., Cincinnati, Ohio 45220.
Decision Support System	Austin Automation Center, 1615 Woodward Street, Austin, TX 78772.
Eastern Pacemaker Surveillance Center Database	Veteran Affairs Medical Center, 50 Irving Street, NW., Washington, DC 20422.
Emerging Pathogens Initiative	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Federal Health Information Exchange	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Financial Clinical Data Mart	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Former Prisoner of War Statistical Tracking System	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Functional Status and Outcome Database	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Home Based Primary Care	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Mammography Quality Standards VA	Veteran Affairs Medical Center, 508 Fulton Street, Durham, NC 27705.
Master Patient Index	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Medical SAS File (MDP) (Medical District Planning (MEDIPRO))	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Missing Patient Register	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
National Mental Health Database System	Veteran Affairs Medical Center, 7180 Highland Drive, Pittsburgh, PA 15206.
National Medical Information System	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
National Survey of Veterans	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Office of Quality and Performance (OQP)	(OQP) Data Center, 601 Keystone Park Drive, Suite 800, Morrisville, NC 27560.

VA APPENDIX 4—Continued

Database name	Location
Parkinson's Disease Research, Education and Clinical Centers Registry.	Veterans Affairs Medical Center, 4150 Clement St., San Francisco, CA 94121.
Patient Assessment File	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Pharmacy Benefits Management	Veterans Affairs Medical Center, 5th Avenue and Roosevelt Road, Hines, IL 60141.
Radiation Exposure Inquiries Database	Office of Information Field Office, 1335 East/West Hwy, Silver Spring MD 20910.
Remote Order Entry System	Denver Distribution Center, 155 Van Gordon Street, Lakewood, CO 80228-1709.
Resident Assessment Instrument/Minimum Data Set	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Short Form Health Survey for Veterans	Veterans Affairs Medical Center, 200 Springs Rd., Bedford, MA 01730.
VA National Clozapine Registry	Veteran Affairs Medical Center, 4500 South Lancaster Road, Dallas, TX 75216.
VA Vital Status File	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Veterans Central Cancer Registry	Veteran Affairs Medical Center, 50 Irving Street, NW., Washington, DC 20422.
Veterans Integrated Service Network Support Service Center Databases.	Austin Automation Center, 1615 Woodward Street, Austin, TX 78772.

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Federal Register

**Wednesday,
March 26, 2008**

Part II

Federal Trade Commission

**16 CFR Part 37
Business Opportunity Rule; Proposed Rule**

FEDERAL TRADE COMMISSION**16 CFR Part 437**

RIN 3084-AB04

Business Opportunity Rule**AGENCY:** Federal Trade Commission.**ACTION:** Revised Notice of Proposed Rulemaking.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is publishing a revised Notice of Proposed Rulemaking to amend Part 437, the trade regulation rule governing sale of business opportunities that are not covered by the amended Franchise Rule. The revised proposed Business Opportunity Rule (or "the Rule") is based upon the comments received in response to an Advance Notice of Proposed Rulemaking ("ANPR"), a Notice of Proposed Rulemaking ("NPRM"), and other information discussed in this notice. The revised proposed Business Opportunity Rule would require business opportunity sellers to furnish prospective purchasers with specific information that is material to the consumer's decision as to whether to purchase a business opportunity and which should help the purchaser identify fraudulent offerings. The proposed rule also would prohibit other acts or practices that are unfair or deceptive within the meaning of Section 5 of the Federal Trade Commission Act (the "FTC Act").

DATES: Written comments must be received on or before May 27, 2008. Rebuttal comments must be received on or before June 16, 2008.

ADDRESS: Interested parties are invited to submit written comments. Comments should refer to "Business Opportunity Rule, R511993" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex S), 600 Pennsylvania Avenue, NW, Washington, DC 20580. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c).¹

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with

The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below.

Comments filed in electronic form should be submitted by using the following weblink: <https://secure.commentworks.com/ftc-bizopRNPR/> (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink <https://secure.commentworks.com/ftc-bizopRNPR/>. If this notice appears at <http://www.regulations.gov>, you may also file an electronic comment through that website. The Commission will consider all comments that www.regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov/opa/index.shtml> to read the Revised Notice of Proposed Rulemaking and the news release describing this proposed Rule.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. Postal Mail is subject

applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

to lengthy delays due to heightened security precautions.

FOR FURTHER INFORMATION CONTACT: Monica Vaca (202) 326-2245, Division of Marketing Practices, Room 286, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: This Revised Notice of Proposed Rulemaking seeks comment on a revised proposed Business Opportunity Rule. In addition to minor wording and punctuation changes to improve clarity, the revised proposed rule modifies the initial proposal in six significant ways:

- It narrows the scope of the proposed Rule to avoid broadly sweeping in sellers of multi-level marketing opportunities, while retaining coverage of those business opportunities sellers historically covered by the FTC's original Franchise Rule (and by the FTC's interim Business Opportunity Rule), as well as coverage of sellers of work-at-home schemes;

- It cures a potential overbreadth problem that may have inadvertently swept in companies using traditional product distribution arrangements;

- It eliminates the previously-proposed requirement that a covered business opportunity seller disclose the number of cancellation and refund requests it received;

- It eliminates the requirement to disclose litigation history of certain sales personnel (while retaining the requirement to disclose litigation history of the seller, its principals, officers, directors, and sales managers, as well as any individual who occupies a position or performs a function similar to an officer, director, or sales manager);

- It adds a requirement to include a citation to the Rule in the title of the required disclosure document; and

- It prohibits misrepresenting that the government or any law forbids providing prospects with a list of prior purchasers of a business opportunity.

The Commission invites interested parties to submit data, views, and arguments on the proposed Business Opportunity Rule and, specifically, on the questions set forth in Section J of this notice. The comment period will remain open until May 27, 2008. To the extent practicable, all comments will be available on the public record and placed on the Commission's website: <http://www.ftc.gov/os/publiccomments.htm>. After the close of the comment period, the record will remain open until June 16, 2008, for rebuttal comments. If necessary, the Commission also will hold hearings with cross-examination and post-

hearing rebuttal submissions, as specified in Section 18(c) of the FTC Act, 15 U.S.C. 57a(c). Parties who request a hearing must file a comment in response to this notice and a statement explaining why they believe a hearing is warranted, how they would participate in a hearing, and a summary of their expected testimony, on or before May 27, 2008. Note that because the NPR has been revised, parties interested in a hearing must resubmit their request in comments to this Revised NPR. Parties testifying at a hearing may be subject to cross-examination. For cross-examination or rebuttal to be permitted, interested parties must also file a comment and request to cross-examine or rebut a witness, designating specific facts in dispute and a summary of their expected testimony, on or before June 16, 2008. In lieu of a hearing, the Commission will also consider requests to hold one or more informal public workshop conferences to discuss the issues raised in this notice and comments.

Section A. Background

The Commission is publishing this Revised Notice of Proposed Rulemaking pursuant to Section 18 of the FTC Act, 15 U.S.C. 57a *et seq.*, and Part 1, Subpart B, of the Commission's Rules of Practice. 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act. 15 U.S.C. 45(a)(1).

On December 21, 1978, the Commission promulgated a trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the "Franchise Rule") to address deceptive and unfair practices in the sale of franchises and business opportunity ventures.² Based upon the original rulemaking record, the Commission found that franchise and business opportunity fraud was widespread, causing serious economic harm to consumers. The Commission adopted the Franchise Rule to prevent fraudulent practices in the sale of franchises and business opportunities through pre-sale disclosure of specified items of material information.

The purpose of the Franchise Rule was not to regulate the substantive terms of a franchise or business

opportunity agreement but to ensure that sellers disclose material information to prospective buyers. The Franchise Rule was posited on the notion that a fully informed consumer can determine whether a particular offering is in his or her best interest.

As part of the Commission's overall policy of periodic review of its trade regulation rules, in 1995 the Commission commenced a regulatory review of the Franchise Rule.³ From the outset of that review proceeding, the predominant theme sounded by commenters and other participants was that the Rule, insofar as it concerned sales of business format franchises, should be more closely harmonized with state franchise regulations—i.e., the Uniform Franchise Offering Circular ("UFOC") Guidelines. A corollary theme was that business opportunity sales should be governed by a separate regulation, in accordance with the approach followed generally at the state level.

Moreover, early in the review the issue arose as to whether the Franchise Rule's extensive disclosure requirements were well-suited to business opportunity sales and whether the Franchise Rule imposed unnecessary compliance costs on both business opportunity sellers and buyers. To ensure that the required disclosures protect prospective business opportunity purchasers, while minimizing overall compliance costs, the Commission solicited comment on whether any of the Rule's disclosures should be eliminated as unnecessary in the business opportunity context and whether any additional material disclosures should be required.⁴

At the conclusion of the Rule Review, the Commission determined to retain the Franchise Rule with modifications designed to harmonize it better with state franchise requirements. At the same time, the Commission determined to seek additional comment on whether to address the sale of business opportunities through a separate narrowly tailored new trade regulation rule.

³ Rule Review, 60 FR 17656 (Apr. 7, 1995). References to the Rule Review comments are cited as: the name of the commenter, RR comment number (e.g., NASAA, RR 43). References to the Rule Review workshop conferences are cited as: name of commenter, Sept95 Tr or March96 Tr, respectively (e.g., D'Imperio, Sept95 Tr, and Ainsely, March96 Tr). A list of the Rule Review commenters and the abbreviations used to identify each in this notice is cited in the Notice of Proposed Rulemaking for the Business Opportunity Rule ("Business Opportunity Rule NPR"). See 71 FR 19054, 19092–93.

⁴ 60 FR at 17658 (Question 14).

In 1997, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") in the **Federal Register**,⁵ seeking further comment on several proposed Franchise Rule modifications, including the separation of disclosure requirements for sales of business opportunities from those for sales of franchises. The Commission also sought comment on the proper scope of the term "business opportunity,"⁶ the types of business opportunities that are known to engage in deceptive or fraudulent conduct,⁷ and the types of disclosures that are material to business opportunity purchasers.⁸

After assessing the comments received in response to the ANPR, the Commission decided to amend the Franchise Rule to harmonize it better with the UFOC. Accordingly, the Commission published a Franchise Rule Notice of Proposed Rulemaking ("Franchise Rule NPR"), soliciting comment on proposed revisions to the Franchise Rule,⁹ and simultaneously announcing the intention to conduct a separate rulemaking to address business opportunity sales.¹⁰ Agreeing with the overwhelming view of the commenters who discussed this issue during the Rule Review and in response to the ANPR, the Commission found that franchises and business opportunities are distinct business arrangements that require separate disclosure approaches.

After addressing each of the required stages of rulemaking under Section 18 of the FTC Act, the Commission announced adoption of an amended Franchise Rule on January 23, 2007, and published the amended rule and accompanying Statement of Basis and Purpose on March 30, 2007.¹¹ In that **Federal Register** notice, the Commission also separated the Franchise Rule into two distinct CFR parts—part 436 governing the sales of business format franchises, and a new part 437, governing the sales of non-franchise business opportunities. Part

⁵ ANPR, 62 FR 9115 (Feb. 28, 1997). References to the ANPR comments are cited as: the name of the commenter, ANPR, comment number (e.g., NASAA, ANPR 120). References to the ANPR workshop conferences are cited as: name of commenter, ANPR, date Tr (e.g., Bundy, ANPR, 6Nov97 Tr). A list of the ANPR commenters and the abbreviations used to identify each is cited in the NPR. See 71 FR at 19093-19095.

⁶ 62 FR at 9116-117 and 9121 (Question 12).

⁷ *Id.* at 9121 (Questions 8–10).

⁸ *Id.* at 9121 (Questions 15–16).

⁹ Franchise Rule NPR, 64 FR 57294 (Oct. 22, 1999).

¹⁰ *Id.* at 57296.

¹¹ Amended Franchise Rule Statement of Basis and Purpose ("Amended Franchise Rule SBP") 72 FR 15444 (March 30, 2007) (Amended Franchise Rule codified at 16 CFR 436).

² Statement of Basis and Purpose ("SBP"), 43 FR 59614 (Dec. 21, 1978) (Franchise Rule codified at 16 CFR 436).

437 is identical to the original Franchise Rule, with all of the definitional elements and references regarding business format franchising deleted.¹² Part 437 will continue to govern sales of non-franchise business opportunities, pending completion of the Business Opportunity rulemaking proceedings advanced in a Notice of Proposed Rulemaking published April 12, 2006.¹³

Section B. The Notice of Proposed Rulemaking

Having determined to create a separate rule for business opportunities, in 2006 the Commission published in the **Federal Register** a Notice of Proposed Rulemaking ("NPR") on a Business Opportunity Rule,¹⁴ which would amend what is now designated as 16 CFR Part 437. The NPR explained the need for a Business Opportunity Rule separate from the Franchise Rule, noting particularly that business opportunities and franchises are distinct business arrangements that pose very different regulatory challenges. For example, franchises typically are expensive and involve complex contractual licensing relationships, while business opportunity sales are often less costly, involving simple purchase agreements that pose less of a financial risk for purchasers.

Yet, the Commission's law enforcement experience in conducting numerous sweeps of the business opportunity industry demonstrates that fraud is not only prevalent but persistent, and many comments also sounded this theme.¹⁵ Just in the period since 1990, the Commission has brought

¹² The interim Business Opportunity Rule differs from the original Franchise Rule in three respects. First, references to "franchisor" and "franchisee" in the original Franchise Rule have been changed to "business opportunity seller," and "business opportunity purchaser," respectively. Second, the original definition of "franchise" set out at 436(a)(2) has been changed to "business opportunity," and the first part of the original definition—the "franchise" elements—has been deleted; the definition now focuses on the second part of the original definition—the business opportunity elements. Third, part 437 sets forth a new exemption for franchises that comply with or are exempt from part 436. Amended Franchise Rule SBP, 72 FR at 15444.

¹³ Business Opportunity Rule NPR, 71 FR 19054 (April 12, 2006).

¹⁴ *Id.*

¹⁵ *E.g.*, Baer, ANPR 25, at 5; Wieczorek, 21Aug97 Tr at 35; DSA, *id.*; Finnigan, *id.* at 90; Kestenbaum, RR 14, at 3-4; Wieczorek, RR 23, at 2-3; Lewis, RR 40, Attachment at 3; CA BLS, RR 45, at 5-6; D'Imperio, Sept95 Tr at 130; Kezios, *id.* at 365, 631. *But see* MLMIA, at 7 & Exhibit A (comment submitted in response to the NPR and its attached declaration argue that fraud is not widespread in the business opportunity sector). The exhibit attached to the MLMIA's comment is belied by the Commission's law enforcement experience, described above, as well as that of the Department of Justice, described in its comment. DOJ, at 1.

some 150 Franchise Rule cases against vending machine, rack display, and similar opportunities. Since 1995, the Commission has conducted more than 15 business opportunity sweeps,¹⁶ many with other federal and state law enforcement partners, to combat persistent business opportunity frauds violating the Franchise Rule, such as those involving the sale of vending machines,¹⁷ rack displays,¹⁸ public telephones,¹⁹ Internet kiosks,²⁰ and 900-number ventures,²¹ among others. The great majority of these cases alleged

¹⁶ *E.g.*, Project False Hope\$ (2006); Project Biz Opp Flop (2005); Project Busted Opportunity (2002); Project Telesweep (1995); Project Bizillions\$ (1999); Operation Money Pit (1998); Project Vend Up Broke (1998); Project Trade Name Games (1997); and Operation Missed Fortune (1996). In addition to joint law enforcement sweeps, Commission staff has also targeted specific business opportunity ventures such as envelope stuffing (Operation Pushing the Envelope 2003, medical billing (Operation Dialing for Deception 2002, and Project Housecall 1997); seminars (Operation Showtime 1998); Internet-related services (Net Opportunities 1998); vending (Project Yankee Trader 1997); and 900 numbers (Project Buylines 1996).

¹⁷ *E.g.*, *FTC v. American Entm't Distribs., Inc.*, No. 04-22431-CIV-Martinez (S.D. Fla. 2004); *FTC v. Pathway Merch., Inc.*, No. 01-CIV-8987 (S.D.N.Y. 2001); *U.S. v. Photo Vend Int'l, Inc.*, No. 98-6935-CIV-Ferguson (S.D. Fla. 1998); *FTC v. Hi Tech Mint Sys., Inc.*, No. 98 CIV 5881 (JES) (S.D.N.Y. 1998); *FTC v. Claude A. Blanc, Jr.*, No. 2:92-CV-129-WCO (N.D. Ga. 1992). *See also* FTC News Release: FTC Announces "Operation Vend Up Broke" (Sept. 3, 1998) (available at <http://www.ftc.gov/opa/1998/09/vendup2.htm>) (FTC and 10 states announce 40 enforcement actions against fraudulent vending business opportunities).

¹⁸ *E.g.*, *U.S. v. Elite Designs, Inc.*, No. CA 05 058 (D.R.I. 2005); *U.S. v. QX Int'l*, No. 398-CV-0453-D (N.D. Tex. 1998); *FTC v. Carousel of Toys*, No. 97-8587-CIV-Ungaro-Benages (S.D. Fla. 1997); *FTC v. Raymond Urso*, No. 97-2680-CIV-Ungaro-Benages (S.D. Fla. 1997); *FTC v. Infinity Multimedia, Inc.*, No. 96-6671-CIV-Gonzalez (S.D. Fla. 1996); *FTC v. O'Rourke*, No. 93-6511-CIV-Ferguson (S.D. Fla. 1993). *See also* FTC News Release: Display Racks for Trade-Named Toys and Trinkets are the Latest in Business Opportunity Fraud Schemes (Aug. 5, 1997) (available at <http://www.ftc.gov/opa/1997/08/tradenam.htm>) (FTC and 8 states file 18 enforcement actions against sellers of bogus display opportunities that use trademarks of well-known companies).

¹⁹ *E.g.*, *FTC v. Advanced Pub. Commc'ns Corp.*, No. 00-00515-CIV-Ungaro-Benages (S.D. Fla. 2000); *FTC v. Ameritel Payphone Distribs., Inc.*, No. 00-0514-CIV-Gold (S.D. Fla. 2000); *FTC v. ComTel Commc'ns Global Network, Inc.*, No. 96-3134-CIV-Highsmith (S.D. Fla. 1996); *FTC v. Intellipay, Inc.*, No. H92 2325 (S.D. Tex. 1992).

²⁰ *E.g.*, *FTC v. Bikini Vending Corp.*, No. CV-S-05-0439-LDG-RJJ (D. Nev. 2005); *FTC v. Network Service Depot, Inc.*, No. CV-SO-05-0440-LDG-LRL (D. Nev. 2005); *U.S. v. Am. Merch. Tech.*, No. 05-20443-CIV-Huck (S.D. Fla. 2005); *FTC v. Hart Mktg. Enter. Ltd., Inc.*, No. 98-222-CIV-T-23 E (M.D. Fla. 1998). *See also* *FTC v. FutureNet, Inc.*, No. CV-98-1113 GHK (BQRx) (C.D. Cal. 1998); *FTC v. TouchNet, Inc.*, No. C98-0176 (W.D. Wash. 1998).

²¹ *E.g.*, *FTC v. Bureau 2000 Int'l, Inc.*, No. 96-1473-DT-(JR) (C.D. Cal. 1996); *FTC v. Genesis One Corp.*, No. CV-96-1516-MRP (MCX) (C.D. Cal. 1996); *FTC v. Innovative Telemedia, Inc.*, No. 96-8140-CIV-Ferguson (S.D. Fla. 1996); *FTC v. Ad-Com Int'l*, No. 96-1472 LGB (VAP) (C.D. Cal. 1996).

Franchise Rule violations. To attack other forms of business opportunity fraud—notably, work-at-home and pyramid schemes—the Commission used Section 5 of the FTC Act, because these schemes were not covered by the original Franchise Rule.²²

The NPR highlighted features of the original Franchise Rule that excluded from its coverage certain types of schemes, such as pyramid schemes and work-at-home schemes.²³ The Commission noted that many of these schemes fell outside the ambit of the Franchise Rule because: (1) the purchase price was less than \$500, the minimum payment necessary to trigger coverage under the original Franchise Rule; (2) required payments were primarily for inventory, which did not count toward the \$500 monetary threshold; (3) the scheme did not offer location or account assistance; or (4) the scheme involved the sale of products to the business opportunity seller rather than to end-users, a further limitation on coverage under the original Franchise Rule.²⁴

To bring the wide array of fraudulent business opportunities within the scope of the Rule, the NPR proposed an expansive definition of "business opportunity." In addition to those business opportunities that had been covered by the original Franchise Rule, the Initial Proposed Business Opportunity Rule (the "IPBOR") aimed to cover work-at-home schemes and pyramid schemes.²⁵

To reach these schemes, the NPR proposed a broad definition of "business opportunity" that would have included commercial arrangements where the seller made "earnings claims" or offered "business assistance."²⁶ The Commission recognized that the most frequent allegation in its law enforcement actions against business opportunity frauds has been that the seller made false and unsubstantiated earnings claims. Therefore, the IPBOR incorporated the broad definition of "earnings claims" from the original Franchise Rule.²⁷

The IPBOR also defined a new term, "business assistance," in a broad manner, using five illustrative examples

²² Likewise, they are not covered under 16 CFR Part 437.

²³ Two types of work-at-home schemes mentioned in the NPR were product assembly schemes and envelope-stuffing schemes. 71 FR at 19059-19060.

²⁴ The limits on coverage of the original Franchise Rule and the effects of those limitations are discussed in detail in the NPR. *See* 71 FR at 19055.

²⁵ *Id.* at 19059.

²⁶ IPBOR, 437.1(d)(3).

²⁷ IPBOR, 437.1(h).

of the types of assistance that would trigger coverage.²⁸ Among these examples, the IPBOR included “buy back” assistance, which refers to a seller’s offer to buy back products that consumers have assembled at home.²⁹ Another example captured the tracking of payments and commissions, a type of assistance that pyramid schemes routinely offer.³⁰ Additionally, the definition of “business assistance” expressly included assistance in the form of training.³¹

At the same time, the IPBOR excised two features of the original Franchise Rule that limited the scope of its coverage: the \$500 minimum payment threshold, and the exemption for purchases of inventory at bona fide wholesale prices. By eliminating the \$500 minimum payment requirement, the IPBOR would have included within its scope the various types of fraudulent business opportunity sellers that have evaded coverage under the disclosure requirements of the Franchise Rule by pricing their schemes below \$500. Envelope stuffing, product assembly, medical billing schemes, and other schemes frequently are priced below the monetary threshold of Franchise Rule coverage.³² Additionally, the IPBOR would have ensured coverage of pyramid schemes by eliminating the inventory exemption.

In response to the NPR, the Commission received more than 17,000 comments.³³ The overwhelming majority of these comments came from the multilevel marketing³⁴ (“MLM”) industry, including industry representatives, companies, and individual distributors. These commenters urged the Commission to

narrow the scope of the IPBOR, to implement various safe-harbor provisions, and/or to reduce the required disclosures. Thousands of comments were form letters³⁵ submitted by participants in various MLM operations, including Quixtar, Shaklee, PartyLite, Xango, among others.³⁶ The Commission also received approximately 187 comments, primarily from individual consumers or consumer groups, in favor of the IPBOR.³⁷ Only a handful of comments came in from non-MLM companies and industry groups, expressing various concerns about obligations that the IPBOR would impose upon them.

Section C. Scope of the Proposed Rule

The revised proposed Business Opportunity Rule (“RPBOR”) is more narrowly tailored than the IPBOR. The RPBOR expressly excludes from coverage training and/or educational organizations that, as the comments showed, may have been inadvertently covered. In addition, the revised proposal does not attempt to cover MLMs. Instead, the Commission will continue to use Section 5, a flexible and effective weapon, against MLMs that engage in unfair or deceptive practices.

In recognition of the prevalence of fraud in the sale of business opportunities, including work-at-home and pyramid schemes, the Commission had designed the IPBOR with an expansive scope in order to reach various fraudulent practices. While expanding the scope of the original Franchise Rule’s coverage of business opportunities, the IPBOR greatly reduced the compliance burden that the original Franchise Rule imposed on business opportunity sellers. The Commission recognized that the extensive disclosures of the original Franchise Rule would entail disproportionate compliance costs for comparatively low-cost transactions

involving the sale of business opportunities.³⁸ Therefore, in an attempt to strike the proper balance, the Commission mitigated the compliance burden by including in the IPBOR substantially simplified and streamlined disclosure requirements.

However, the streamlining did not fully achieve the Commission’s purpose. Two key problems emerged with the IPBOR’s breadth of coverage. First, the IPBOR would have unintentionally swept in numerous commercial arrangements where there is little or no evidence that fraud is occurring. Second, the IPBOR would have imposed greater burdens on the MLM industry than other types of business opportunity sellers without sufficient countervailing benefits to consumers.

1. Traditional Product Distribution Arrangements and Others

Several commenters contended that the IPBOR would have regulated a wide range of legitimate and traditional product distribution arrangements that are not associated with the types of fraud that business opportunity laws are designed to remedy.³⁹ As one commenter described it, the IPBOR would have swept in traditional arrangements for distribution of “food and beverages, construction equipment, manufactured homes, electronic components, computer systems, medical supplies and equipment, automotive parts, automotive tools and other tools, petroleum products, industrial chemicals, office supplies and equipment, and magazines.”⁴⁰ For example, one commenter, a footwear manufacturer, suggested that the IPBOR could be read to cover the commenter’s product distribution through retail stores simply because the retailer pays for inventory and the manufacturer provides sales training to its retail accounts.⁴¹ Thus, this aspect of the commenter’s operations would meet the definition of “business opportunity” in the IPBOR because: (1) the “payment”

²⁸ IPBOR, 437.1(c).

²⁹ IPBOR, 437.1(c)(1)(iii).

³⁰ IPBOR, 437.1(c)(1)(iv).

³¹ IPBOR, 437.1(c)(v).

³² See *infra* Section D.1.a.1.i.

³³ References to the comments responding to the Business Opportunity Rule NPR are cited by the name of the commenter and the page number. Individual commenters are identified by their first and last names. Companies and organizations are identified by abbreviated names. A list of companies and organization that are cited herein and the abbreviations used to identify each is attached as Attachment A.

³⁴ Multi-level marketing is one form of direct selling, and refers to a business model in which a company distributes products through a network of distributors who earn income from their own retail sales of the product and from retail sales made by the distributors’ direct and indirect recruits. Because they earn a commission from the sales their recruits make, each member in the MLM network has an incentive to continue recruiting additional sales representatives into their “down lines.” See Peter J. Vander Nat and William W. Keep, *Marketing Fraud: An Approach to Differentiating Multilevel Marketing from Pyramid Schemes*, 21 J. of Pub. Pol’y & Marketing (Spring 2002), (“Vander Nat and Keep”) at 140.

³⁵ Some commenters provided information demonstrating that certain MLM companies solicited their distributors to submit letters in their proposed form or template to the FTC. See e.g., James Kellogg (Quixtar); Smith (Arbonne); Anonymous (PartyLite).

³⁶ In addition, the Commission received form letters from participants in AdvoCare, Tastefully Simple, Nature’s Sunshine, Arbonne, Lia Sophia, Mannatech, Cookie Lee Jewelry, Sunrider, Scent Station, Neways, Synergy Worldwide, Freelif, Young Living Essential Oils, and Vemma. In addition, the Commission received thousands of letters that were individualized but followed a template that covered the same issues as the form letters.

³⁷ Numerous letters came from individuals with negative experience with various MLMs, including Quixtar, 4Life, Mary Kay, Arbonne, Liberty League International, Financial Freedom Society, Herbalife, Xango, Melaleuca, EcoQuest, Pre-Paid Legal, PartyLite, Shaklee, Vartec/Excel, and Vemma.

³⁸ 71 FR at 10057.

³⁹ E.g., IBA, at 1, 5; PMI, at 2; Timberland, at 1; Sonnenschein, at 1-2 (stating that the rule would cover “manufacturers, suppliers and other traditional distribution firms that have relied on the bona fide wholesale price exclusion to avoid coverage” under the rule). The Cosmetic, Toiletry and Fragrance Association posits that the IPBOR would cover the relationship between a manufacturer and an independent contractor who sells the product to beauty supply companies, salons, and others. CTFA, at 4. See also LHD&L at 2 (noting that the IPBOR could cover the relationship between a manufacturer and a regional distributor of products).

⁴⁰ IBA, at 5; Timberland, at 1 (noting that numerous manufacturers structure their retail distribution in this manner).

⁴¹ Timberland, at 1.

prong of the definition did not exempt voluntary purchases of inventory; and (2) providing retail staff with sales training would satisfy the “business assistance” prong of the definition.⁴² Moreover, review of the comments suggests that even if a company provides no “business assistance,” a product distribution arrangement still easily could have fallen within the scope of the IPBOR if the company made some representation about sales or profits sufficient to constitute an “earnings claim.”⁴³ One trade association notes, “[a]s a practical matter, suppliers will find it difficult to enter into a business relationship with a distributor or dealer without at least discussing possible sales volumes or profit levels.”⁴⁴

Other commenters argued that the IPBOR would have been broad enough to cover: bona fide educational programs offered by colleges and universities;⁴⁵ the sale of certain books by publishers or book stores;⁴⁶ and even the relationship between newspapers and independent carriers who distribute the papers to homes and businesses.⁴⁷ Because application of the IPBOR to these types of arrangements was unintended, the Commission has narrowed the proposed definition of the term “business opportunity,” to exclude from coverage distribution arrangements in which the only required payment is for reasonable amounts of inventory at bona fide wholesale prices. In addition, the proposed definition of “business opportunity” has been substantially narrowed as explained in Section D, *infra*.

2. The MLM Industry

The second problem with the breadth of the IPBOR’s coverage relates to the Commission’s attempt to reach pyramid schemes with the Business Opportunity Rule. An overwhelming majority of commenters⁴⁸ argued that the IPBOR failed to differentiate between unlawful pyramid schemes and legitimate companies using an MLM business model. These commenters argued that the requirements of the IPBOR simultaneously would have been

insufficient to curb pyramid fraud⁴⁹ yet devastating to MLM companies and individual MLM distributors. Criticism was not confined to industry comments. Two consumer groups also filed comments asserting that, although MLMs should be covered, the disclosures the Commission proposed in the IPBOR would be inadequate to remedy deceptive earnings claims.⁵⁰ On balance, based upon this record and its law enforcement experience, the Commission does not believe it is practicable or sufficiently beneficial to consumers to attempt to apply the proposals advanced in this rulemaking against multi-level marketing companies, particularly when considering the burdens upon industry. The Commission, therefore, has determined that at this point, it will continue to use Section 5 to challenge unfair and deceptive acts or practices in the MLM industry.

a. Industry comments

MLM industry representatives, MLM companies, and independent distributors for those companies submitted numerous comments. The strongly stated theme common to all these comments was that the low economic risks of participating in a typical MLM do not justify imposing burdensome regulations that would threaten to strangle the MLM industry.

These commenters pointed out that the fees top MLM companies charge prospective distributors for the right to sell products are low—often less than \$100.⁵¹ Furthermore, commenters argued, the risk that consumers will lose money through large purchases of inventory is low. The Direct Selling Association (“DSA”), a national trade association of direct selling firms that claims to account for 95% of the industry’s sales in the United States,⁵² asserts that its members offer a 90% refund on resalable inventory and on other start-up costs, as well.⁵³ Certain

MLM companies commented that they do not require distributors to purchase any inventory in advance of selling it.⁵⁴ As one commenter put it, purchasing a direct selling opportunity “is less complicated and carries less financial risk for a participant than purchasing a flat-screen TV set.”⁵⁵ Commenters contended that the low-risk nature of the distributorship is essential to facilitate ease of entry because the MLM industry relies on part-time and seasonal distributors.⁵⁶ Furthermore, these commenters argued that there is no evidence that the MLM industry is permeated with fraud.⁵⁷

The MLM industry commenters also sharply criticized each of the primary requirements of the IPBOR. They argued that, balanced against the low risk of financial loss, it would be excessively burdensome to mandate a seven-day waiting period and the various disclosure and recordkeeping obligations. The seven-day waiting period would require sellers to wait seven days after presenting disclosure documents to the prospective purchaser before collecting any money or obtaining an executed contract.⁵⁸ The provision is designed to allow prospective purchasers the opportunity to review required disclosures thoroughly or to speak with an advisor. The proposed seven-day waiting period drew intense criticism from industry groups, and was characterized as “regulatory overkill” by Primerica Financial Services, Inc.⁵⁹

MLM industry commenters argued that the waiting period would undercut the basic MLM business model, characterized by minimal risk of financial loss and maximum ease of entry. The DSA submitted a survey showing that the level of interest in becoming a direct salesperson drops at least 33% and as much as 57% when a waiting period is imposed.⁶⁰ Commenters opined that the waiting

⁴⁹ DSA, at 21 (positing that compliance with the new mandates would be ignored by fraudulent pyramid schemes).

⁵⁰ The Consumer Awareness Institute and Pyramid Scheme Alert each submitted comments and rebuttal comments.

⁵¹ Shaklee, at 3 (\$19.95); Avon, at 10 (\$10 or \$60); Quixtar, at 5 (\$45); Pampered Chef, at 2 (\$90); Mary Kay, at 3 (\$100).

⁵² DSA, at 4. According to the DSA, 84% of direct selling firms use some form of multilevel compensation. DSA, at 9, 13 (defining direct selling as “the sale of a consumer product or service, in a face-to-face manner, away from a fixed retail location”).

⁵³ DSA, at 24 n. 45 (describing the Code of Ethics that members must follow). *See also, e.g.*, Shaklee, at 6 (stating it has a 90% buy back requirement for its products and start-up kit purchased within the last two years); Quixtar at 3.

⁵⁴ Primerica Rebuttal, at 6; Avon, at 4; Quixtar, at 5; Mary Kay, at 4.

⁵⁵ Primerica Rebuttal, at 17.

⁵⁶ *E.g.*, Mary Kay, at 4 (estimating that 80% of its sales force members are part-time); Avon, at 3 (“With its low cost / low risk design, many Representatives take advantage of its ease of entry and exit to come and go as their needs / goals change.”); CTFA, at 2.

⁵⁷ *E.g.*, SIA, at 5; Primerica, at 34; DSA, at 18–20.

⁵⁸ IPBOR, 437.2.

⁵⁹ Primerica Rebuttal, at 16. *See also* MLM DRA, at 5 (stating that “the majority of MLM distributors are very small mom and pop businesses” and that “this burden would very likely ruin their business.”). United States Congressman Tom Cole also submitted a comment expressing the opinion that the seven-day waiting period is inappropriate for business opportunity sales costing less than \$500. Cole, at 1.

⁶⁰ DSA, at 24.

⁴² IPBOR, 437.1(d)(2); IPBOR, 437.1(c)(v).

⁴³ IPBOR, 437.1(d)(3)(i).

⁴⁴ IBA, at 4. *See also* PMI, at 3 n. 1.

⁴⁵ Chadbourne, at 7 - 13 (illustrating the point with numerous course offering descriptions that could arguably fall within the definition of “business opportunity”); Venable, at 3-5 (same).

⁴⁶ Venable, at 2 - 3.

⁴⁷ NAA, at 1-3.

⁴⁸ Of the more than 17,000 comments that the Commission received, it is fair to estimate that well over 95% came from members of the MLM industry expressing opposition to the IPBOR. As noted above, many of these were form letters.

period would make entry into this business much harder; moreover, some commenters stated that the waiting period would significantly burden recruiting because multiple visits would be necessary for each potential recruit.⁶¹

Industry commenters also contended that the various disclosure obligations of the IPBOR are ill-suited to the MLM business model. For example, industry commenters assert that an MLM's list of distributors is proprietary information⁶² that is kept strictly confidential because distributors necessarily compete with each other to recruit additional distributors into their "down lines."⁶³ The IPBOR would have required an MLM distributor to provide to every potential recruit a disclosure document that includes a list of other distributors as references.⁶⁴ As one commenter put it, furnishing a list of distributors to every individual who inquires about an MLM distributorship, "would be like requiring a salesman to introduce his customer to ten competing salesmen and then wait seven days before attempting to close a sale."⁶⁵ The Commission notes that another characteristic of the MLM model may undermine the utility of the list of references that the IPBOR would have required MLMs to disclose. Specifically, a previous purchaser on the reference list likely would stand to receive a financial benefit if a prospect who contacts them were successfully recruited by that previous purchaser. Under these circumstances, information from such a reference might not be the most reliable basis for the prospect's purchasing decision.

Other disclosure obligations of the IPBOR, industry commenters contended, "will paint all direct selling companies in a falsely negative light."⁶⁶ For example, according to one commenter, the proposed obligation to disclose legal actions⁶⁷ would cast successful and long-established companies in a worse light than a fly-by-night fraudulent business

⁶¹ DSA, at 25–26 (positing that three visits would be required to sign up a prospective participant); Shaklee, at 6 (stating that a waiting period would be "as though regulators had painted a big 'X' on the backs of direct selling companies, warning consumers 'not to go there.');" Avon, at 14.

⁶² Shaklee, at 7 ("a company's distributor and customer lists are its most important and confidential information which competitors must be kept from accessing."); DSA, at 30 (stating that the list of sellers has been kept confidential even from the IRS); Avon, at 16–17;

⁶³ Avon, at 16–17 (stating that direct selling companies compete for same recruits); DSA, at 30–31.

⁶⁴ IPBOR, 437.3(a)(6).

⁶⁵ Quixtar, at 31–32.

⁶⁶ Pre-Paid Legal, at 8.

⁶⁷ IPBOR, 437.3(a)(3).

opportunity promoter "simply because bigger companies with more sales representatives and more years of operation are likely to get involved in a larger number of cases."⁶⁸ Some commenters pointed out that as publicly-traded companies, information about their legal actions is already publicly available.⁶⁹

Similarly, according to these commenters, the obligation to disclose refund requests and cancellations⁷⁰ would penalize MLM industry members who deliberately structure their business model to facilitate ease of entry by offering refunds. Because companies with liberal refund policies are more likely to have refund requests than those offering no refunds, disclosure of refund requests could mislead consumers into thinking that the company offering liberal refunds is less reputable than the company offering no refunds.⁷¹ The rule would create a perverse incentive to discontinue refund policies.⁷²

Some industry commenters contended that the IPBOR's earnings claim disclosure requirement⁷³ would itself be misleading or incomplete. While some commenters stated they already make an earnings disclosure, they opposed the IPBOR's provisions for a variety of reasons.⁷⁴ For example, some industry commenters argued that only the earnings of so-called "active" distributors should be considered because many individuals use their distributorship as a "buyers club" and are only interested in purchasing goods at a wholesale price for their own use,

⁶⁸ Quixtar, at 34. See also SPC, at 3 (stating that it is a subsidiary of Time, Inc., and the litigation disclosure of affiliate companies would encompass all of Time Warner, which includes hundreds of companies).

⁶⁹ Avon, at 10, 15; Pre-Paid Legal, at 14.

⁷⁰ IPBOR, Section 437.3(a)(5).

⁷¹ E.g., Pre-Paid Legal at 15–16; DSA, at 29 (stating that because individuals enter and exit direct selling each year to meet short term goals, the number of cancellation requests is likely to be artificially high and misleading). See also Quixtar, at 39 (asserting that because individuals join and leave for various personal reasons, information on cancellations would be "of little, if any, benefit"); PANM, at 3 (stating that reporting cancellations and refunds serves no purpose at all where the fee is nominal).

⁷² MLMIA, at 51–52, Pre-Paid Legal, at 16; Herbalife, at 10. See also Carico, at 1 (stating that because dishonest companies would not honor an agreement to make refunds, the IPBOR would only have a negative effect on legitimate companies).

⁷³ IPBOR, 437.3(a) and 437.4.

⁷⁴ E.g., Quixtar, at 25–26 (proposing an earnings disclosure that would include only "active" distributor earnings and would allow the company to "infer a reasonable level of 'retail' profit"); Melaleuca, at 9–10 (stating that it publishes income statistics but opposing a federally mandated disclosure); FreeLife, at 4 (preferring disclaimers to the IPBOR's requirements).

not for resale.⁷⁵ Commenters argued that those who use the distributorship in this way do not expect to earn money, and so the earnings of these inactive distributors should not be counted.⁷⁶ Further, one commenter stated that a disclosure of average earnings may unfairly suggest that distributors achieve low earnings when, in fact, those earnings are substantial given the amount of time spent selling.⁷⁷

Furthermore, many industry commenters argued that the IPBOR's required earnings disclosure would be far too complicated because it would require a disclosure of the material characteristics of purchasers who earned the claimed income.⁷⁸ As such, some industry commenters expressed concern that the proposed earnings disclosure would unnecessarily complicate a simple and low-risk transaction.⁷⁹ Furthermore, other commenters pointed out that it would be extremely burdensome for legitimate businesses that attempted to comply,⁸⁰ but it would not be helpful to consumers in evaluating the opportunity or in distinguishing fraudulent claims.⁸¹ One commenter went further, stating that: "the required disclosures do not address the crucial distinction between pyramids and legitimate multi-level marketing—i.e., in pyramids, compensation is based on recruitment, rather than sales for consumption."⁸²

Finally, echoing the concerns raised above, industry commenters uniformly asserted that the cost of compliance with the IPBOR would be extremely high, much higher than the Commission

⁷⁵ E.g., Shaklee, at 3 (stating that 85% of individuals who sign up with Shaklee do so as "wholesale buyers" rather than distributors); Quixtar, at 8; Herbalife, at 2.

⁷⁶ E.g., Quixtar, at 25 & n. 30; Primerica Rebuttal, at 34.

⁷⁷ Avon, at 19. See also DSA, at 33 (questioning the relevance of earnings statistics to an individual who enters as discount buyer or for short term supplemental income).

⁷⁸ The IPBOR would require disclosure of "any characteristics of the purchasers who achieved at least the represented level of earnings, such as their location, that may differ materially from the characteristics of the prospective purchasers being offered the business opportunity." IPBOR, 437.4(a)(4)(vi).

⁷⁹ Avon, at 18; Quixtar, at 21 (stating that the goal should not be "to provide a maze of intricate calculations and disclosures but to instead put across the simple point that most participants in the business opportunity earn modest incomes").

⁸⁰ E.g., DSA, at 33; HIG, at 3; Pre-Paid Legal, at 10. Some commenters contend that it would be impossible to comply with this requirement. Shaklee, at 10; Xango, at 6; Vector, at 3.

⁸¹ E.g., DSA, at 33; Xango, at 6; Mary Kay, at 10; Synergy, at 2. See also Xango, at 6 ("[s]uch complicated compilations will only serve to confuse prospective purchasers"); Symmetry, at 2.

⁸² Primerica, at 26.

estimated.⁸³ The costs of complying would arise, first, from the burden of developing, providing, and keeping records of the proposed disclosures, and second, from the impaired ability to recruit. With regard to the first point, industry commenters contended that the burden of making the proposed disclosures would fall disproportionately on established, legitimate businesses.⁸⁴ For example, the single page disclosure would be simple for a new—possibly fraudulent—company that has no litigation history and fewer than 10 references.⁸⁵ For long-established MLMs, however, the costs would be quite high: having polled its members on this issue, the DSA states that the median total compliance cost for a small firm would be approximately \$130,000 annually, and more than \$567,000 annually for a large firm.⁸⁶ DSA further estimates that because about 5 million people are recruited into direct selling each year, the paperwork burden would include distributing over 750 million pages of disclosure documents annually.⁸⁷ Furthermore, according to the DSA, the IPBOR's requirement to retain documents for three years would require 2.25 billion pieces of paper to be generated and warehoused.⁸⁸

Second, and apart from the direct cost of complying, industry commenters contend that the IPBOR's requirements would impose high costs because it would significantly impair the ability to recruit.⁸⁹ According to Primerica, "[b]ased on a conservative estimate that the Proposed Rule would reduce Primerica's recruiting by 25 percent,

⁸³ Mary Kay, at 9 (estimating that the record keeping requirement would cost "between \$300,000 and \$500,000 per year in additional expenses, software and training").

⁸⁴ Primerica, at 15–16.

⁸⁵ *Id.*

⁸⁶ DSA, at 21–22 (stating that 26 firms responded to its July 2006 survey on compliance costs). See also Shaklee, at 9 (estimating that the cost of compliance would likely exceed \$100 million for the industry); MLMIA, at 12 (estimating that cost of compliance for each MLM distributor would be between \$25,000 to \$45,000 for the first year and \$10,000 to \$20,000 per year thereafter).

⁸⁷ *Id.* at 21 (reporting that respondents estimate disclosing 15 pages of documents under the IPBOR). See also Vector, at 3 (estimating that the proposed disclosure would require Vector to provide over 100 million pieces of paper annually to potential recruits).

⁸⁸ *Id.* at 21. See also Melaleuca, at 5 – 6 (estimating that Melaleuca would need to store 1.8 million disclosure documents over a rolling three-year period).

⁸⁹ "If a new application, disclosure document and seven-day waiting period were required for a Member to become a Distributor, the number of Members who choose to build a small home-based business would dramatically decline." Shaklee, at 6 (stating that recruitment dropped when Shaklee introduced two applications instead of one).

Primerica projected an economic loss of \$1 billion for Primerica alone over the next ten years if the [IPBOR were] promulgated."⁹⁰ The cost of impaired recruiting, some commenters argued, would be borne by the millions of individual MLM distributors who would find their home businesses adversely affected.⁹¹ Indeed, the MLM Distributors Rights Association ("DRA") warned that the IPBOR would put "millions out of business," and concluded with a plea to "come up with a new rule that will protect without damaging the little guy in America trying to make a living."⁹² Numerous letters submitted by individual MLM participants echo this theme, as well.⁹³

b. Consumer group comments

The Commission received comments from two consumer groups, the Consumer Awareness Institute ("CAI") and Pyramid Scheme Alert ("PSA"),⁹⁴ a few other consumer advocates,⁹⁵ individuals who regret becoming involved in MLMs,⁹⁶ and other

⁹⁰ Primerica Rebuttal, at 11 (emphasis in original).

⁹¹ MLM DRA, at 2, 5 (estimating that there are between 13 million and 15 million MLM distributors in the United States); Babener, at 3 (the IPBOR would cripple "the livelihoods of 14 million Americans that look to direct selling to help support their families").

⁹² DRA, at 2, 7. The DRA demands that the Commission drop the IPBOR in its entirety. DRA, at 2.

⁹³ *E.g.*, Tina Bailey, at 1 ("This bill would kill my business and I would loose [sic] my ability to be a stay at home mom with an income."); Eric Gang, at 1 ("If adopted, the Rule would destroy my small business that I have worked so hard to develop."); Anne Trevaskis, at 1 ("As a person with a disability, unable to go out to work, if [the IPBOR] is adopted, I will be prevented, continuing as an independent distributor"); Marian Warshauer, at 1 ("Please don't penalize and ruin and honest earning opportunity for tens of thousands of people with legitimate companies"); Noelle Marino, at 1 ("I'm very concerned about [the IPBOR], because I believe it will jeopardize my business.").

⁹⁴ CAI and PSA each submitted comments with numerous reports attached. Citations to their comments will specifically note the submitting entity and the name of the report.

⁹⁵ See Eric Scheibeler (author of *Merchants of Deception*, a book ostensibly warning the public about Quixtar); Bruce Craig (former Assistant Attorney General for the State of Wisconsin); Douglas Brooks (law practitioner who has represented class actions against MLM companies).

⁹⁶ *E.g.*, Katy Li ("If I had been given basic statistics about the company I never would have joined"); Marshelle Hinojosa ("Please pass the BUSINESS OPPORTUNITY LAW and stop these pyramid schemes!"); Valerie Andersen ("Words cannot express the humiliation, financial loss and lost respect and trust from friends and family members ... whom [sic] were persuaded by me because they trusted me ... to join the MLM ..."); J Padgett (describing his wife's involvement in an MLM); Robin Smith (stating that she would not have joined an MLM if she had known the background of the principals); David McHenry ("Make these MLMs legally responsible for their claims with documentation that is accurate from the beginning."); James Kenny; Charles Wagner; Brian

individual MLM participants in favor of a Business Opportunity Rule that would cover MLMs.⁹⁷ Consumer advocates contend that the MLM industry is comprised primarily of pyramid scheme operators masquerading as legitimate companies.⁹⁸ While commenters lauded the Commission's efforts to impose a business opportunity rule that would cover MLM firms, they argued that the rule's earnings disclosure requirements were insufficient to expose a fraudulent MLM company as a pyramid scheme.⁹⁹ CAI expressly recommended a different disclosure for MLM companies than for all other forms of business opportunities.¹⁰⁰

According to these consumer groups, virtually all MLMs are pyramid schemes that enrich those at the top through the endless recruitment of new participants.¹⁰¹ These commenters contended that the purported sale of products to end users (i.e., typical customers) is just a mirage, because the MLM sales force seldom engages in retail selling.¹⁰²

Further, according to these commenters, MLMs deceptively market distributorships as a low-risk opportunity with high earnings potential. In fact, the cost of participating in an MLM can be quite high, including not only the registration fees, but also the cost of product purchases, training and seminars, and other features purported to enhance a recruit's performance in an MLM.¹⁰³ The typical earnings, by contrast, are extremely small and cannot be

Wess; Kelly Boucher, Rebuttal; Carol Franklin, Rebuttal.

⁹⁷ *E.g.*, Barbara Avery ("Direct selling or mmlm CAN be a good program if done with honesty and integrity- enacting laws to protect the consumer would be a welcome change!"); Kristine Keesler ("I think this new legislation would be very beneficial. If I had seven days to consider my decision and 10 references I would not have jumped into the ... business so quickly.").

⁹⁸ CAI, at 2 ("I can certify that MLM (sic) are not direct selling programs, but chain selling programs"); CAI Rebuttal of DSA Comments, at 3 ("The Direct Selling Association (DSA), recently taken over by chain sellers now promotes chain selling (pyramid marketing) - even more than legitimate direct selling"). See also Brooks, at 2 ("In my opinion, most MLM firms operate in a deceptive or fraudulent manner").

⁹⁹ CAI, at 3; PSA, at 2. See also Douglas Brooks, at 3 (stating that disclosures will not prevent consumer injury caused by pyramid schemes).

¹⁰⁰ CAI, at 6.

¹⁰¹ CAI, at 2 ("out of hundreds of MLM programs we have evaluated, no more than a (sic) three of them could qualify as legitimate retail-based programs."). See also PSA, at 1.

¹⁰² PSA, *The Myth of Income Opportunity in Multi-Level Marketing*, at 4.

¹⁰³ PSA, *The Myth of Income Opportunity in Multi-Level Marketing*, at 4 (pointing to Amway/Quixtar's sale of books, tapes and seminar registrations to new recruits); Douglas Brooks, at 4, 5; Scott Johnson, at 1.

considered anything but a net loss when business expenses are considered.¹⁰⁴ In fact, these commenters contended, more than 99% of individuals who participate in MLMs lose money.¹⁰⁵

These consumer groups recommended implementing a number of changes to the disclosure requirements in the IPBOR. To begin with, the IPBOR would have required business opportunity sellers to state whether they make any earnings claim, and if they do, to have written substantiation for the claim.¹⁰⁶ PSA argued that MLMs are presented to consumers as income opportunities, and therefore, should not be allowed the option of asserting that they make no earnings claim.¹⁰⁷ With regard to the earnings disclosure itself, they recommended two changes to the IPBOR. First, they recommended that the earnings disclosure state the average *retail-based* income that participants achieve.¹⁰⁸ They argued that, by focusing on dollars earned from retail sales, the disclosure document would highlight the key feature that distinguishes a legitimate company from a pyramid scheme—the sale of products to end users.¹⁰⁹

Second, these commenters asserted that the earnings disclosure should state not only the revenue paid to participants, but also should reveal the payments by participants for products and services.¹¹⁰ CAI argued that product purchases—necessary to advance in the MLM hierarchy—are often a major element of the overall investment in an

MLM; typically, the initial registration fee is nominal, and is just the beginning of the total investment.¹¹¹ PSA also argued that the earnings disclosures that some MLMs make are deceptive because they fail to include the money participants pay out to the MLM.¹¹² In addition, according to PSA, MLMs routinely include only the income of “active” participants in their averages, and thus conceal ongoing and mounting losses of new investors.¹¹³

Regarding the other provisions of the IPBOR, CAI supported the requirement of disclosing refund history, but noted that it is not particularly useful in the MLM context, inasmuch as “[i]t is extremely rare for MLM victims to recognize the fraud in an MLM program without intensive de-programming by a knowledgeable consumer advocate.”¹¹⁴ CAI also recommended that the ten referrals to prior purchasers should include at least five *ex-participants* in the business,¹¹⁵ and that there should be a three-day waiting period that includes a recommendation to search the internet for information about the company.¹¹⁶

3. Analysis

Section 18(d)(2)(B) of the FTC Act, 15 U.S.C. 57a(d)(2)(B), states that “[a] substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection.” The standard for amending or repealing a section 18 rule is identical to that for promulgating a trade regulation rule pursuant to section 18.

When deciding whether to amend a rule, the Commission engages in a multi-step inquiry. Initially, the Commission requires evidence that an existing act or practice is legally unfair or deceptive. The Commission then requires affirmative answers, based upon the preponderance of reliable evidence, to the following four questions:

- (1) Is the act or practice prevalent?¹¹⁷
- (2) Does a significant harm exist?
- (3) Would the rule provisions under consideration reduce that harm? and
- (4) Will the benefits of the rule exceed its costs?

¹¹¹ CAI, *Red Flags*, at 10.

¹¹² PSA, at 2.

¹¹³ PSA, *The Myth of Income Opportunity in Multi-Level Marketing*, at 3.

¹¹⁴ CAI, *Red Flags* at 11; CAI, at 7.

¹¹⁵ CAI, at 7.

¹¹⁶ CAI, at 6.

¹¹⁷ See 15 U.S.C. Section 57a(b)(3) (stating that prevalence may be established if information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices).

See Credit Practices Rule, 49 FR 7740, 7742 (Mar. 1, 1984).¹¹⁸

The discussion below addresses, first, the question of whether there are widespread unfair or deceptive acts or practices that cause consumer harm. Second, the discussion reviews the various proposals for reducing consumer harm and the adequacy of case-by-case law enforcement under sections 5 and 13(b) of the FTC Act to address existing problems. To summarize, while there is a significant concern that some pyramid schemes masquerade as legitimate MLMs, assessing the incidence of such practices is difficult. In any event, commenters broadly concur that the IPBOR would not help consumers make an informed decision about the risks of joining a particular MLM. Further, the comments do not provide sufficient information about how to tailor the proposed rule so that disclosures assist in the purchase decision in a manner that is likely to reduce consumer harm. Moreover, it appears that the burden of complying with the IPBOR would be costly to legitimate companies using the MLM business model without the promise of sufficient offsetting benefits to prospective purchasers of MLM distributorships.

a. Prevalence of deceptive practices causing significant consumer harm

In considering whether to impose an industry-wide rule covering MLMs, the threshold inquiry is identifying the unfair or deceptive practices at issue. If such practices exist, the Commission evaluates whether such practices are prevalent and cause significant consumer harm. While these are separate areas of consideration, these inquiries overlap and are discussed together to avoid unnecessary redundancy.

There are two related but distinct allegations of deceptive practices regarding MLM companies. The debate about the legitimacy of MLM companies typically centers on whether an MLM operates as a pyramid. By their very nature, pyramid schemes are deceptive and violate the FTC Act. Equally serious, however, is the question of whether an MLM is engaged in making false earnings claims. These allegations are clearly related in that any claim that the average participant in a pyramid

¹¹⁸ See also 15 U.S.C. Section 57a(d)(1)(A)—(C) (requiring in the Statement of Basis and Purpose accompanying the rule a statement as to prevalence, the manner in which the acts or practices are unfair or deceptive, and the economic effect of the rule); Federal Trade Commission Organization, Procedures and Rules of Practice, 16 CFR 1.14(a) (i)–(iv).

¹⁰⁴ PSA, *The Myth of Income Opportunity in Multi-Level Marketing*, at 3 (stating that 99% of all sales representatives in the sample of companies analyzed earned less than \$14 per week, a figure that does not count any business expenses, such as inventory purchases).

¹⁰⁵ PSA, at 2; CAI, *The 5 Red Flags*, at 15-16. One commenter, noting that some MLMs require no advance purchases of inventory, strongly disagreed with this conclusion: “The facts in the record provide no basis for deducting assumed ‘costs’ from the available income estimates and jump to the conclusion that participants actually *lose money*. ... It is simply not possible that agents are required to pay more money to Primerica than they receive in commissions, because there is no requirement that they buy anything from Primerica.” Primerica Rebuttal at 6 (emphasis in original).

¹⁰⁶ 437.3(a)(2) & 437.4(a)(2).

¹⁰⁷ PSA at 2. Several individuals filed form comments, with small variations, making this point as well. *E.g.*, Jean Smith; Douglas Konkol; Harold Ducre; Rachel Quill; N Gursahani; Petteiri Haipola; Bradford Chase; Curtis Marburger; Joel Rolfe; Marshall Massengill; Marcus Batte. See also CAI, at 6 (asserting that if MLMs present themselves as offering an “income opportunity,” they should have to disclose earnings).

¹⁰⁸ PSA, at 2.

¹⁰⁹ PSA, at 2. CAI, *Red Flags* at 5 (acknowledging that an MLM may be legitimate if it allows a person to earn a significant income from retailing products to end users).

¹¹⁰ CAI, at 7; PSA, at 2.

scheme will make money is necessarily false. But even if an MLM is not operating as a pyramid scheme, it violates the FTC Act if it makes false earnings projections to consumers.

The comments received about the legitimacy of MLMs, discussed above, demonstrate sharply divergent points of view. The record in this proceeding to date is largely comprised of thousands of letters from consumers who operate as MLM distributors.¹¹⁹ Many of these commenters extolled the benefits of the products they sell and overwhelmingly urged the Commission not to impose a rule that would hamper their ability to run their small businesses.¹²⁰ Organizations representing distributors also voiced strong opposition to the IPBOR.¹²¹ In addition, the National Association of Consumer Agency Administrators ("NACAA"), after canvassing its members nationwide, stated that they "reported there was no appreciable number of complaints filed against direct sellers that are member companies of the Direct Selling Association."¹²² One comment presented a survey finding that an "average" distributor earns \$418 per month,¹²³ and DSA presented another survey¹²⁴ finding that 85% of direct

¹¹⁹ In response to the NPR, the Commission received comments from approximately 16,700 individual MLM distributors. While several thousands of these were form letters, thousands more included individual recitations of positive personal experiences with the MLM distributorships.

¹²⁰ *E.g.*, Tom Hadley, at 1 (pastor stating that he uses the income he receives from his XanGo distributorship to pay his childrens' college expenses); Gary Minor, at 1 (distributor of Young Living Essential Oils states he believes the product is exceptional and he makes money from selling product); Kelly Radke, at 1 (Tastefully Simple distributor stating that direct selling is a way for moms to stay home with their kids, pay off bills, and even save for vacations and retirement).

¹²¹ The Commission received comment from the World Association of Persons with disabilities, Inc., the MLM Distributor Rights Association, and the Professional Association for Network Marketing, expressing opposition to the IPBOR.

¹²² NACAA, at 1 (stating that "NACAA currently represents more than 160 government agencies and 50 corporate consumer offices in the United States and abroad."). The Chamber of Commerce of the United States of America also filed a comment stating that in "coordination with key industry leaders," it has concluded that the IPBOR would "impose a tremendous burden on legitimate businesses with little benefit to consumers." CC USA, at 1. Although it does not expressly mention the DSA, the Commission believes that the CC USA is referring to the direct selling industry. Similarly, the National Black Chamber of Commerce filed a comment urging the Commission to tailor the IPBOR more narrowly because of the impact on direct selling companies. NBCC at 1-2.

¹²³ MLMIA, Appendix A at 13 (Coughlan and Grayson, *Network Marketing Organizations: Compensation Plans, Retail Network Growth, and Profitability*, 15 International Journal of Research in Marketing 401 (1998)).

¹²⁴ DSA Rebuttal, at 3.

sellers say that direct selling meets or exceeds their expectations as a good way to supplement their income.¹²⁵ Given the overwhelming number of comments from consumers who operate as MLM distributors and from organizations representing such distributors, the Commission does not dispute the proposition that MLM companies can operate legitimately.

Sharply diverging from the comments of industry advocates are those of consumer advocates who argued that by and large, MLMs victimize consumers by claiming to provide an opportunity to earn money that cannot realistically be achieved. The Commission's law enforcement experience shows that some MLMs have violated the law by making false earnings representations and have operated as pyramid schemes. In the last ten years, the Commission has sued fourteen pyramid schemes that purported to be legitimate MLM businesses selling products to end-users.¹²⁶ *FTC v. Equinox International Corp.* provides a prime example of how a pyramid scheme could masquerade as a legitimate MLM. Equinox purported to offer distributorships to sell products, including water filters, vitamins, nutritional supplements, and skin care products.¹²⁷ However, the company emphasized to new distributors that the real way to make money was through recruiting additional distributors, not through product sales. The company extracted money from its recruits by encouraging them to enter the MLM at the "manager" level, which required a purchase of \$5,000 worth of products; to rent desk space for \$300 to \$500 per

¹²⁵ PSA argued to the contrary, pointing to its study of seven companies which ostensibly shows that 99% of MLM distributors earn no profit from company rebates, and further stating that it is practically impossible for distributors to earn money through product sales. PSA, *The Myth* at 24, 29 (reviewing pay-outs that seven MLM companies made to distributors between 1998 and 2004). *But see* Primerica Rebuttal, at 5 (characterizing the data as "both unrepresentative and unreliable.").

¹²⁶ *FTC v. BurnLounge*, No. 2:07-cv-03654-GW-FMO (C.D. Cal. 2007); *FTC v. Mall Ventures, Inc.*, No. CV 04-0463 FMA (PLAx) (C.D. Cal. 2004); *FTC v. NexGen3000.com*, No. 03-120 TUC WDB (D. Ariz. 2003); *FTC v. Trek Alliance, Inc.*, No. CV-02-9270 (C.D. Cal. 2002); *FTC v. Streamline Int'l, Inc.*, 01-6885-CIV-Ferguson (S.D. Fla. 2001); *FTC v. Bigsmart.com*, No. CIV 01-0466 PHX ROS (D. Ariz. 2001); *FTC v. Netforce Seminars, Inc.*, No. 00 2260 PHX FJM (D. Ariz. 2000); *FTC v. 2Xtreme Performance Int'l, LLC*, No. Civ. JFM 99CV 3679 (D. Md. 1999); *FTC v. Equinox Int'l, Corp.*, No. CV-S-99-0969-JBR-RLH (D. Nev. 1999); *FTC v. Five Star Auto Club, Inc.*, No. CIV-99-1693 McMahan (S.D. N.Y. 1999); *FTC v. FutureNet, Inc.*, No. CV-98-1113 GHK (C.D. Cal. 1998); *FTC v. JewelWay, Inc.*, No. 97-383 TUC JMR (D. Ariz. 1997); *FTC v. World Class Network, Inc.*, No. SACV-97-162-AHS (C.D. Cal. 1997); *FTC v. Mentor Network, Inc.*, No. SACV 96-1104 LHM (Eex) (C.D. Cal. 1996).

¹²⁷ See <http://www.ftc.gov/opa/1999/08/equinox1.shtm>.

month; to subscribe to a phone line so they could recruit others; and to attend trainings and seminars at a cost of \$300 to \$1,000.

Equinox had ostensibly implemented safeguards to show it was not a pyramid scheme. For example, Equinox purported to link compensation to retail sales, including requiring distributors to produce receipts showing retail purchases. However, the evidence revealed that such policies were not enforced.¹²⁸ Like other members of the DSA, Equinox purported to offer refunds on inventory purchases. Yet, the net loss to consumers who participated in Equinox was more than \$330 million.¹²⁹ Indeed, pyramid schemes masquerading as legitimate MLMs can implement numerous purported safeguards to appear legitimate.¹³⁰

Apart from operating as illegal pyramids, MLMs also could be engaged in making false earnings representations. In the Commission's law enforcement experience, all of its pyramid cases¹³¹ against purportedly legitimate MLMs alleged that the defendant made false earnings representations. Notably, at least one other case the Commission brought against an MLM company alleged false earnings representations.¹³² Nevertheless, MLM industry advocates

¹²⁸ See also *FTC v. Trek Alliance, Inc.*, CV-02-9270 (C.D. Cal. 2002); <http://www.ftc.gov/opa/2003/08/trek.shtm>.

¹²⁹ Documented proof of claim forms received from consumer-victims of Equinox reveal that the net loss to consumers was at least \$330 million. The defendants settled FTC charges by paying cash, corporate and individual assets in the amount of nearly \$50 million, which comprised virtually all the assets of the defendants. As part of the settlement, the individual defendant, William Gould was barred permanently from engaging in any multi-level marketing operations. See <http://www.ftc.gov/opa/2000/04/equinox.shtm>.

¹³⁰ In *Webster v. Omnitrion Int'l, Inc.*, distributors sued Omnitrion, an MLM company, alleging that it was a pyramid scheme. The Ninth Circuit reviewed the safeguards that the MLM purportedly used to ensure retail sales. *Webster v. Omnitrion Int'l, Inc.*, 79 F.3d 776 (9th Cir. 1998). These included requiring no payment to become a distributor; imposing no quota of products that distributors were required to buy from the MLM; imposing an affirmative obligation that distributors certify that 70% of products they ordered have been resold and that they have made sales to at least 10 retail customers in the past month; and affording a 90% refund on resaleable inventory if the distributor resigns from the company. *Id.* at 780. In spite of these safeguards, the Ninth Circuit concluded that summary judgment in favor of Omnitrion was inappropriate because "the structure of the scheme suggests that Omnitrion's focus was in promoting the program rather than selling the products." *Id.* at 782. The Court further noted that Omnitrion failed to show that it enforced its 70% resale rule or its buy-back rule on distributors. *Id.* at 784.

¹³¹ See *supra* note 126.

¹³² *In re Nu Skin Int'l Inc.*, Docket C-3489, 117 F.T.C. 316, 324 (1994).

argue that a government regulation is not needed to protect individuals taking low financial risks, such as the great many MLM distributors who participate on a part-time or seasonal basis.

However, while MLM commenters contended that the cost of joining is typically very small, they often referred only to the minimum required fees, and did not mention all costs necessary to qualify for higher levels of compensation.¹³³ Such costs are problematic to the extent that MLM firms market their distributorships with lifestyle representations¹³⁴ that do not correlate to the small part-time income that active MLM distributors primarily earn.¹³⁵

On the basis of its law enforcement experience and the rulemaking record, the Commission concludes that some MLMs engage in unfair or deceptive acts or practices. These practices include operation of pyramid schemes and false or unsubstantiated earnings claims. It is beyond a doubt that where they occur, these practices cause significant consumer harm. The Equinox case alone illustrates that the harm to consumers resulting from such practices is enormous—not just in the aggregate, but individually.

The further question as to whether such deceptive practices are prevalent, however, is elusive. It is difficult to gauge the incidence of such practices among MLMs. As noted in more detail below, determining whether a company operates as a pyramid requires a fact-specific inquiry that depends on evaluating a number of factors. Even if deceptive practices were established as prevalent in the MLM industry, however, the Commission has determined at this time that neither the IPBOR nor the alternative proposals that commenters advanced appear likely to

¹³³ In *Webster v. Omnitrion*, the Ninth Circuit observed that while there was no cost to becoming a distributor in the MLM company, the cost of qualifying for higher compensation was “substantial.” 79 F.3d at 782.

¹³⁴ Depending upon the particular representations, touting grandiose lifestyles may be considered an earnings claim—rather than mere puffery—that must be substantiated. The Commission has long held that an earnings claim includes statements from which a prospective purchaser could reasonably infer “a specific level or range of income,” such as “earn enough money to buy a new Porsche.” See Franchise Rule Final Interpretive Guides, 44 FR 49965, 49982 (Aug. 24, 1979).

¹³⁵ E.g., MLMIA, Appendix A at 13 (presenting a survey finding that earnings for an average distributor are \$418 per month); DSA at 15 (“A direct seller’s median annual gross income from direct selling is about \$2,400 per year.”); Avon, at 19 (“those selling on a part-time basis may show low earnings, which, in fact, may be quite substantial given the amount of time they spend selling Avon products.”).

be sufficiently effective to remedy these practices.

b. Whether the IPBOR or other proposals would reduce consumer harm

After careful consideration, the Commission believes that the consumer harm flowing from deceptive practices in the MLM industry can more effectively be addressed at this time through targeted law enforcement under Section 5. Commenters on all sides generally agree that the IPBOR’s required disclosures would not help consumers identify a fraudulent scheme. As discussed below, a simple earnings disclosure is unlikely to enable consumers to determine whether an MLM company is operating lawfully. Further, at this time, the record indicates that the proposed alternatives that various commenters suggested would not effectively counter deceptive practices and would not enable consumers to avoid a fraud.

As commenters noted, an earnings disclosure, such as the one proposed in the IPBOR, will not help prospective purchasers determine whether an offering is a pyramid or is a legitimate MLM because it does not reveal the source of the income.¹³⁶ The main difference between a pyramid scheme and a legitimate MLM is that the legitimate company actually derives its income primarily from the retail sale of products to end users, while the pyramid scheme supplies income to participants at the top of the pyramid primarily through fees that new participants pay for the right to participate in the venture.¹³⁷ In a pyramid scheme, a participant can reap rewards only by obtaining a portion of the fees paid by those who join the scheme later. People who join later, in turn, pay their fees in the hope of profiting from payments of those who enter the scheme after they do. In this way, a pyramid scheme simply transfers monies from losers to winners. For each person who substantially profits from the scheme, there must be many more losing all, or a portion, of their investment to fund those winnings. Absent sufficient sales of goods and services, the profits in such a system hinge on nothing more than recruitment of new fee-paying participants into the system.

As the Commission’s cases demonstrate, the sale of goods and services alone does not necessarily render a multi-level system legitimate.

¹³⁶ See PSA, at 2; CAI, Red Flags at 5; Primerica at 26.

¹³⁷ See Staff Advisory Opinion—Pyramid Scheme Analysis, January 14, 2004.

Modern pyramid schemes display endless ingenuity in finding ways to disguise payment of participation fees to appear as if they are for the sale of goods or services. The source of the income typically is not easy to discern from a facial examination of a company’s compensation structure and the safeguards it purportedly has in place. Economic analysis of the MLM business model suggests a continuum with clearly legitimate MLMs at one end and clearly fraudulent pyramid schemes at the other. With some basic company information, a company residing at one pole or the other can be identified. Nevertheless, in the middle is a substantial gray area where differentiating the two is much more difficult because the source of income is both sales of products or services and participation fees.¹³⁸ Indeed, the question of whether a purportedly legitimate MLM is, in reality, only a pyramid scheme in masquerade is a highly fact-intensive inquiry. That being the case, the issue is a particularly difficult one to address via industry-wide rulemaking, as opposed to case-by-case enforcement.

Commenters have advanced three main alternatives to the specific elements of the IPBOR: (1) granting a safe-harbor to companies that implement certain safeguards; (2) requiring detailed earnings information; and (3) defining what constitutes a pyramid scheme. As explained in more detail below, at this time, the Commission is not persuaded that any of these proposals would likely lead to a rule that would not unfairly burden legitimate companies while rooting out pernicious frauds dressed in the garb of legitimacy.

i. MLM comments advocating a safe harbor to exempt legitimate companies would not adequately distinguish between pyramids and legitimate companies

MLM industry commenters suggest limitations on the rule so that it would exclude firms that require very low registration fees;¹³⁹ firms that offer refunds on inventory purchases;¹⁴⁰ firms that are publicly-traded;¹⁴¹ firms that have been in business for a

¹³⁸ Vander Nat and Keep, at 149.

¹³⁹ Avon, at 10 (advocating that the Commission impose a monetary threshold for required payments and that the rule not apply to transactions below that threshold); Pre-Paid Legal, at 1 (advocating a monetary threshold of \$250).

¹⁴⁰ Quixtar, at 5; Melaleuca, at 7.

¹⁴¹ Pre-Paid Legal, at 1; Avon, at 10; Herbalife, at 16.

significant number of years;¹⁴² or firms that are members of a self-regulatory body, such as the DSA.¹⁴³ However, none of these factors is determinative of whether a company is, in fact, a pyramid scheme or otherwise engaged in deceptive conduct. Furthermore, the effort to craft a workable rule using these criteria could undermine law enforcement efforts if pyramid schemes masquerading as MLMs were able to manipulate their corporate structure—as Equinox did—to meet safe harbor provisions while continuing, in fact, to operate illegally.

ii. Imposing the earnings disclosures that consumer groups suggest on MLMs is fraught with problems and complexity

Consumer advocates advanced a requirement to disclose the retail-based earnings of active and inactive participants, deducting the costs distributors paid.¹⁴⁴ There are several problems with this approach. Given the complexities of each MLM's compensation schedule, developing a standard, useful, understandable, and straightforward earnings disclosure that would serve industry-wide is elusive. Further complicating the problem are the practical considerations of whether MLMs could, using an industry-wide format, gather reliable information on retail earnings.

More broadly, a number of issues would make it difficult to craft an industry-wide rule on a proper earnings disclosure, as proposed above. A meaningful earnings claim disclosure likely would require different disclosures for different levels of participation in the company. For example, how should such a disclosure treat inactive participants who have joined merely to purchase product for their own use as opposed to active participants in the earnings figure? How would one identify participants who are inactive because they only wanted to obtain access to the product at wholesale prices rather than those who are inactive because they concluded that the business was not suitable for them?¹⁴⁵ How long after a participant's last sale should he or she be considered "inactive"?¹⁴⁶ MLM companies often have complicated compensation

schedules that offer greater compensation for greater sales volume. Moreover, because there likely is an earnings disparity between new MLM recruits and distributors who have well-established down-lines, an additional issue arises as to whether a disclosure of participants' median income rather than average income is most appropriate. In pyramids, a disclosure of average income would suggest that all participants have the ability to make the claimed earnings, when in reality, the earnings figure is skewed to reflect the lavish profits reaped by those at the top of the pyramid. New recruits to the pyramid scheme would not have any possibility of reaping such profits. Median income, by contrast, would eliminate the outliers, thus providing a more realistic picture of what the majority of participants earn in a pyramid. Whether that is the most appropriate measuring stick for a legitimate MLM company where earnings are based on retail sales is unclear.

Second, it may be difficult to determine retail income. While an MLM firm may provide distributors with products, the MLM may not be able to verify the extent to which a distributor has resold the product at retail, is warehousing the product, or bought the product for his or her own personal consumption. Even where an MLM has policies in place purportedly to ensure that a portion of its distributors' income comes from retail sales—as opposed to inventory loading—the company may still lack accurate figures on the true amount of its distributors' retail income.¹⁴⁷ For example, such policies could go unenforced, or even if they were ostensibly enforced, could be circumvented by distributors, who may have an incentive to "certify" their sales in order to qualify for higher level of commissions.¹⁴⁸ Indeed, the potential collusion between MLM companies and distributors to fake the true level of retail sales would undermine the utility of an earnings disclosure based on retail income.

The deduction of costs also is problematic. Primerica argued that the

proposal to deduct a distributor's costs, in particular, is "administratively impossible" because it "require(s) information that companies do not routinely possess and cannot easily obtain."¹⁴⁹ For example, business-related expenses could include independent costs that an MLM could not track, such as costs for computers, office equipment, leasing office space and other facilities.¹⁵⁰ In addition, many commenters point out that MLM participants use their membership to purchase products at a discount for their own personal consumption.¹⁵¹ Deducting "costs" that members pay to the MLM would be too broad insofar as it would include inventory that distributors choose to purchase for themselves.¹⁵²

In view of these difficulties, the Commission at this time believes it is more cost-effective to challenge deceptive MLM practices through targeted law enforcement under Section 5.¹⁵³

iii. Crafting a definition of "pyramid scheme" would be counter-productive

Some commenters advocated crafting a definition of "pyramid scheme" that would avoid the problems of overbreadth in the IPBOR by excluding legitimate MLMs from coverage while keeping pyramid schemes covered.¹⁵⁴ There are two practical difficulties with this approach. First, as noted above, there is no bright-line, universal test for the particular quantity of retail sales that in every case would suffice to fund the payment of commissions for every MLM company. While economic analysis can reveal if an individual company clearly is operating legitimately or if it clearly is a pyramid scheme, it is difficult to draw an appropriate line in the gray area.¹⁵⁵

¹⁴⁹ Primerica Rebuttal, at 34.

¹⁵⁰ Primerica Rebuttal, at 35.

¹⁵¹ See *supra*, note 75.

¹⁵² Primerica Rebuttal, at 6 ("Moreover, these commenters allege losses based in part on counting as costs what the record makes plain is a benefit for many participants—the ability to purchase for personal consumption products they like at a significant discount.").

¹⁵³ Regardless of whether it is covered by the proposed rule, if a business makes earnings claims, including through the use of testimonials, such claims must be truthful and must be substantiated, under Section 5 of the FTC Act.

¹⁵⁴ E.g., Craig, at 7-8 (former Assistant Attorney General with the State of Wisconsin); Primerica, at 38.

¹⁵⁵ See VanderNat and Keep, *Marketing Fraud: An Approach to Differentiating Multilevel Marketing from Pyramid Schemes*, 21 J. of Pub. Pol'y & Marketing, at 149. See also Primerica Rebuttal, at 35 ("As the extensive analysis contained in [consumer group] comments demonstrates, identifying a pyramid scheme (or, at least, one that attempts to disguise itself as a legitimate business

¹⁴² Primerica, at 41.

¹⁴³ DSA, at 42.

¹⁴⁴ PSA, at 2; CAI, at 7.

¹⁴⁵ The issue of inactive participants who are only interested in obtaining product at wholesale prices appears to be unique to MLMs. As far as the Commission is aware, this complication does not arise in other forms of business opportunities. In the MLM context, the record does not reveal the extent to which individuals join MLMs to buy products at wholesale.

¹⁴⁶ E.g., Primerica Rebuttal at 34-35.

¹⁴⁷ *Webster v. Omnitrition International, Inc.*, 79 F.3d 776, 783 (9th Cir. 1996) (stating that Omnitrition produced no evidence that it enforced its rule ostensibly requiring its distributors to sell at wholesale or at retail 70% of the products they bought).

¹⁴⁸ In the *Omnitrition* case, the Ninth Circuit commented on the requirement that distributors certify their sale of the product, stating: "There is no evidence that this 'certification' requirement actually serves to deter inventory loading." 79 F.3d at 783. Similarly, in the Commission case against Equinox, it was alleged that the MLM looked away when distributors wrote their own receipts to fake retail sales to consumers.

Second, any definition of “pyramid scheme” would provide bad actors with a road map for restructuring their businesses to skirt the definition, at least facially, and thereby providing them with a safe harbor that could undercut law enforcement efforts.

The benefit of using Section 5 to prosecute pyramid schemes is that it is a flexible instrument that allows the Commission to pursue bad actors no matter how they choose to manipulate their corporate structure. At this time, and on the basis of evidence in the record, the Commission declines to define “pyramid scheme” through rulemaking but will continue to use Section 5 to attack such schemes.

c. Benefits and Burdens of the IPBOR

As set forth above in greater detail, MLM industry commenters contend that the burdens of making the IPBOR’s disclosures would be devastating. Some of these concerns are overblown and clearly misunderstand the intent of the IPBOR, which would not require individual MLM distributors to disclose their personal litigation histories, for example, to prospective purchasers.¹⁵⁶ However, numerous commenters made valid points about the direct cost of complying and the indirect cost of loss recruitment. As one commenter noted, with a dwindled sales force, there would be a consequent drop in the sale of product, and the cost to one MLM, Primerica, would be \$1 billion over ten years.¹⁵⁷ Even if this figure grossly overestimates the cost to individual MLM companies, millions of MLM distributors, according to distributors and groups representing MLM distributors, would individually bear the cost of lost recruitment and would find their home businesses adversely affected.

Commenters also argued that the burdens are unjustified because the disclosure requirements are ill-suited to the MLM industry and would fail to help consumers identify a risky opportunity. For example, the requirement that business opportunity sellers disclose a list of prior purchasers would be costly for covered companies but would not help consumers analyze the possibility of loss because every prior purchaser has an incentive to sell

opportunity) entails an in-depth examination of the compensation structure and the actual manner in which compensation flows within an organization.”)

¹⁵⁶ *E.g.*, Mary Kay, at 8, 9; MLMIA, at 9-10 (estimating that there are 10 million business opportunity sellers in the marketplace, and further stating: “The Proposed Rule may actually cause a recession in the United States if fully enforced.”).

¹⁵⁷ Primerica, at 3, 4; Primerica Rebuttal, at 11.

the opportunity in order to recruit additional distributors into their “down lines.” Thus, they might not provide a very reliable assessment of participating in the opportunity offered. Similarly, to the extent individuals join MLMs only to purchase products at wholesale, the waiting period would be an unnecessary obstacle. And, as noted above, the earnings claim disclosure requirement would itself be incomplete and possibly misleading because it would be unlikely to capture and accurately portray the actual source of compensation.

d. Conclusion

The deceptive practices of some companies using the MLM business model, which operate as pyramids or disseminate false earnings claims, remain a troubling consumer hazard. On the question of whether such practices are prevalent, however, it is difficult to gauge the incidence of such practices among MLMs. Even if the troubling practices were established to be prevalent, the Commission is not persuaded at this time that the proposed remedies would significantly redress consumer harm in a cost-effective manner. The Commission believes that the burdens that would be imposed upon legitimate business operations would not appear to be justified by possible benefits to consumers. To fashion a proper approach to combat fraud in the MLM industry, the Commission will continue to examine the MLM industry and individual companies, particularly the degree to which product sales fund the compensation that distributors earn. At this time, however, the Commission believes that the proposed rule is too blunt of an instrument to cure fraud in the MLM industry. The Commission has determined that it will use the flexibility inherent in Section 5 of the FTC Act to address particular frauds in the MLM industry.

Section D. The Proposed Rule

To limit the proposed rule’s scope, as discussed above, the Commission now proposes a significantly revised Section 437.1, redefining “business opportunity.” In addition, the Commission proposes three changes to Section 437.3, which prescribes the content of the basic disclosure document. Finally, the Commission also proposes minor changes to Section 437.5, which addresses deceptive claims and practices in connection with business opportunity sales. Each of these proposals is discussed in detail below. In addition, this section discusses commenters’ recommendations for specific changes

and the Commission’s reasons for adopting or not adopting them. As noted below, the Commission continues to solicit commentary on all aspects of the RPBOR.

1. Proposed Section 437.1: Definitions

As with the IPBOR, the RPBOR begins with a “definitions” section. With the exception of the terms discussed specifically below, the definitions in the RPBOR are the same as in the IPBOR. As noted, the Commission proposes to narrow the scope of the proposed rule by redefining the term “business opportunity.” The RPBOR eliminates the previously defined term “business assistance” and adds a new term, “required payment.” In addition, the RPBOR slightly modifies the definition of “designated person” and of “providing locations.”

a. Proposed Section 437.1(c): “Business opportunity”

The definition of “business opportunity” establishes the parameters of the Rule’s coverage. In the RPBOR, the Commission proposes a tailored definition of “business opportunity” that will reach those business opportunities that have, in the Commission’s law enforcement experience, persistently caused substantial consumer injury. These include business opportunities promoting vending machine, rack-display, work-at-home, medical billing, and 900-number schemes, among others.

The three definitional elements of the term “business opportunity” in the RPBOR are: (1) a solicitation to enter into a new business; (2) a “required payment” made to the seller; and (3) a representation that the seller will provide assistance in the form of securing locations, securing accounts, or buying back goods produced by the business. The RPBOR incorporates and builds on the definition of “business opportunity” used in the original Franchise Rule and the interim Business Opportunity Rule¹⁵⁸ to cover these particular types of schemes.¹⁵⁹

The changes to the IPBOR’s definition of “business opportunity” are three-fold. First, the RPBOR definition includes a prong limiting coverage to opportunities for which “the

¹⁵⁸ As noted previously, the interim Business Opportunity Rule, found at 16 CFR 437, is the portion of the original Franchise Rule that applied to business opportunities. It will remain effective until the current rulemaking proceedings conclude.

¹⁵⁹ See Primerica, at 39 (suggesting that the Commission should “[r]etain the existing definition from the Franchise Rule that covers business opportunities and expand [it] based on demonstrated problems.”); DSA, at 39-40.

prospective purchaser makes a required payment” for the purchase of the business opportunity. This change will exclude from the definition business relationships in which the only required payment is for inventory at bona fide wholesale prices. Second, the RPBOR definition eliminates two types of “business assistance” that formerly would have triggered the Rule’s strictures and disclosure obligations, namely tracking payments and providing training. Third, the RPBOR no longer links the definition of “business opportunity” to the making of an earnings claim. Each of these changes is discussed in detail below.

1. Required payment

i. Inventory exemption

The RPBOR definition reaches only those opportunities where the prospective purchaser of a business opportunity makes a required payment to the seller. Proposed section 437.1(o) specifies that a “required payment” includes “all consideration that the purchaser must pay to the seller or an affiliate, either by contract or practical necessity, as a condition of obtaining or commencing operation of the business opportunity. Such payment may be made directly or indirectly through a third party. A required payment does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.”

The exclusion from the definition of inventory purchases at bona fide wholesale prices of “required payment” effectuates the Commission’s determination that traditional product distribution arrangements should not be covered by the Business Opportunity Rule.¹⁶⁰ Accordingly, the definition of “required payment” is substantially similar to that employed in the recently amended Franchise Rule,¹⁶¹ but also incorporates language from the IPBOR that reaches situations where a payment is made either directly to the seller or indirectly through a third party.¹⁶²

The inventory exemption was originally set forth by the Commission in its 1979 Final Interpretative Guide to

the Franchise Rule.¹⁶³ The point of excluding payments for inventory was to exclude “agency relationships in which independent agents, compensated by commission, sell goods or services (e.g., insurance salespersons).”¹⁶⁴ Indeed, as numerous commenters point out, manufacturers, suppliers, and other traditional distribution firms “have relied solely on the bona fide wholesale price exclusion to avoid coverage as a franchise.”¹⁶⁵

The IPBOR had eliminated this concept in an attempt to bring pyramid schemes that engaged in “inventory loading” within the ambit of the Rule. As discussed above, however, the Commission has determined that challenging such practices in targeted law enforcement actions under Section 5 of the FTC Act is a more cost-effective approach than attempting to address pyramid schemes as proposed in the IPBOR.

ii. Monetary threshold

Only business opportunities costing the purchaser at least \$500 are covered by the interim Business Opportunity Rule. The RPBOR, however, would eliminate any monetary threshold for the required payment. Many commenters, including MLM industry members as well as non-MLM product distributors, urged the Commission to establish a minimum threshold.¹⁶⁶ A common theme in many comments submitted by the MLM industry is that mandatory disclosures are not necessary or appropriate for small investments.¹⁶⁷ On the other hand, some commenters, such as the National Consumers League (“NCL”) strongly support the proposal to drop the financial threshold to zero, as a means of closing gaps that would allow perpetrators of fraud room to avoid making disclosures.¹⁶⁸

¹⁶³ See Franchise Rule Final Interpretive Guides, 44 FR at 49967 (“the Commission will not construe as ‘required payments’ any payments made by a person at a bona fide wholesale price for reasonable amounts of merchandise to be used for resale. The Commission will construe ‘reasonable amounts’ to mean amounts not in excess of those which a reasonable businessman normally would purchase by way of a starting inventory or supply or to maintain a going inventory or supply.”).

¹⁶⁴ *Id.* at 49967-68.

¹⁶⁵ Sonnenschein, at 1-2. See also NAA, at 1-3; Timberland, at 1 (noting that numerous manufacturers structure their retail distribution in this manner); CTFa, at 4.

¹⁶⁶ E.g., DSA, at 37; Avon, at 10; Pre-Paid Legal, at 1; Sonnenschein, at 5; Herbalife, at 15; IBOAI, at 4-5; IBA, at 9.

¹⁶⁷ E.g., Xango, at 4; Avon, at 12; Herbalife, at 3; Shure, at 1-2; Symmetry, at 1.

¹⁶⁸ NCL, at 1, 2 (“[F]or many work-at-home victims, even losses of less than \$100 can have significant impacts. Some mention living on fixed disability or retirement incomes, others are desperately trying to supplement their wages in order to make ends meet.”). See also ASTA, at 2.

Many pernicious frauds, including typical work-at-home schemes, have fallen outside the ambit of the original Franchise Rule’s disclosure obligations because it covered only a franchise or business opportunity costing at least \$500.¹⁶⁹ These frauds have often targeted vulnerable populations, such as the disabled, elderly, and immigrant populations.¹⁷⁰ Some commenters asserted that a monetary threshold simply provides scam operators a means to circumvent the Rule, noting that business opportunities sometimes charge \$495 to skirt the original Franchise Rule’s disclosure requirements. For example, NCL stated that the:

\$500 minimum investment . . . leaves many consumers without the disclosures and other protections that they need. Nearly one-third of the consumers who reported to the NFIC last year that they had lost money to fraudulent or deceptive business opportunities paid less than \$500. . . . Whatever minimum amount might be set, fraudulent operators will price their services below it, and consumers will be victimized.¹⁷¹

Based upon this record and its law enforcement experience, the Commission concludes that the scope of

¹⁶⁹ See e.g., *FTC v. Med. Billers Network, Inc.*, No. 05 CIV 2014 (RJH) (S.D.N.Y. 2005) (\$200-295 fee); *FTC v. Sun Ray Trading*, No. Civ. 05-20402-CIV-Seitz/Bandstra (S.D. Fla. 2005) (\$160 fee); *FTC v. Wholesale Marketing Group, LLC*, No. 05 CV 6485 (N.D. Ill. 2005) (\$65 to \$175 registration fees); *FTC v. Vinyard Enterprises, Inc.*, No. 03-23291-CIV-ALTONAGA (S.D. Fla. 2003) (\$139 fee); *FTC v. Leading Edge Processing, Inc.*, 6:02-CV-681-ORL-19 DAB (M.D. Fla. 2002) (\$150 fee); *FTC v. Healthcare Claims Network, Inc.*, No. 2:02-CV-4569 MMM (AMWx) (C.D. Cal. 2002) (\$485 fee); *FTC v. Stuffingforcash.com, Corp.*, No. 92 C 5022 (N.D. Ill. 2002) (\$45 fee); *FTC v. Kamaco Int'l*, No. CV 02-04566 LGB (RNBx) (C.D. Cal. 2002) (\$42 fee); *FTC v. Medicor LLC*, No. CV01-1896 (CBM) (C.D. Cal. 2001) (\$375 fee); *FTC v. SkyBiz.com*, No. 01-CV-0396-EA (X) (N.D. Okla. 2001) (\$125 fee); *FTC v. Para-Link Int'l*, No. 8:00-CV-2114-T-27E (M.D. Fla. 2000) (\$395 to \$495 fee).

¹⁷⁰ E.g., *FTC v. Juan Matos*, No. 06-161429 CIV-Altonaga (S.D. Fla. 2006) (\$110 fee); *FTC v. USS Elder Enterprises, Inc.*, No. SACV-04-1039 AHS (Anx) (C.D. Cal. 2004) (\$50 to \$180 fees); *FTC v. Castle Publishing, Inc.*, No. A03CA 905SS (W.D. Tex. 2003) (\$59 to \$149 fees); *FTC v. Esteban Barrios Vega*, No. H-04-1478 (S.D. Tex. 2003) (\$79 to \$149 fees).

¹⁷¹ NCL, ANPR 35, at 11. See also SBA Advocacy, ANPR 36, at 6 (“[T]hreshold should be lowered to \$100 in order to curtail the number of unsavory companies that are beyond the reach of the FTC because they sell their scandalous ‘business opportunities’ for \$495.”); M. Garceau, 20Nov97 Tr at 53 (“[I]t should be one dollar”); D’Imperio, Sept95 Tr at 130 (“I don’t care if it’s \$10, fraud is fraud.”); Purvin, *id.* at 280 (“[C]ompanies use that threshold to avoid regulation and consequently have their entry fee be under \$500, which seems to me forces the amount of money that a prospective purchaser can lose within a very acceptable norm.”).

¹⁶⁰ See *supra* C.1.

¹⁶¹ See 16 CFR 436.1(s).

¹⁶² As noted in the NPR, this provision is designed to close a potential loophole that would subvert the proposed rule’s anti-fraud protections. Without such a provision, fraudulent business opportunity sellers could circumvent the Rule by requiring payment to a third party with which the seller has a formal or informal business relationship. While this concept appeared in the IPBOR’s definition of “business opportunity,” it is now incorporated into the definition of “required payment.”

the RPBOR should be broad enough to reach business opportunities that our anti-fraud law enforcement history and consumer complaints show are a widespread and persistent problem. To make the Rule sufficiently broad to reach persistent frauds, such as work-at-home schemes and envelope stuffing schemes, the RPBOR eliminates the monetary threshold. Expansion of the Rule's coverage to reach these particular types of fraud is balanced by significantly streamlined disclosure obligations, which result in drastically reduced compliance costs. At the same time, the RPBOR's more limited definition of the types of business assistance that trigger coverage of the Rule, *see infra*, D.1.a.2., will avoid blanket coverage of commercial arrangements for the purchase of a business venture costing less than \$500.

2. Limiting the type of business assistance that would trigger coverage of the Rule

"Business assistance" was a key definitional element of the term "business opportunity" in the IPBOR, and remains so in the RPBOR, but with certain modifications intended to correct the IPBOR's overbreadth. The IPBOR defined the term "business opportunity," in relevant part, as "a commercial arrangement in which . . . the seller . . . either makes an earnings claim or represents that the seller or one or more designated persons will provide the purchaser with *business assistance*."¹⁷² In turn, the IPBOR defined "business assistance" as "the offer of material advice, information, or support to a prospective purchaser in connection with the establishment or operation of a new business," and included five illustrative examples of the kinds of activities considered to be "business assistance": securing locations; securing accounts; buying back goods produced by the business; tracking or paying commissions or other compensation for recruitment or sales; and training or advising for the business.

The RPBOR streamlines and narrows the scope of the definition of "business opportunity" by, among other things, incorporating the concept of "assistance" into the "business opportunity" definition itself, rather than cross referencing a separate "business assistance" definition. Also, to cure the overbreadth of the IPBOR, activities specified as fulfilling the "assistance" prong of the "business opportunity" definition of the RPBOR

do not include: tracking or paying commissions or other compensation for recruitment or sales; or generalized training or advising.

The RPBOR retains the scope of the original Franchise Rule (as currently set forth in the interim Business Opportunity Rule), in that it includes location and account assistance in the definition of "business opportunity." Indeed, the Commission's enforcement experience shows that the offer of location assistance is the hallmark of fraudulent vending machine and rack display route opportunities,¹⁷³ while account assistance is typical of medical billing schemes.¹⁷⁴

Similarly, the RPBOR retains the example of "buy back" assistance in the proposed definition of "business opportunity" because it is a characteristic feature of work-at-home schemes promoting product assembly and envelope stuffing schemes.¹⁷⁵ The term, however, would be broadened slightly to make explicit that any payments or promise of payments for home-based envelope stuffing schemes come within the parameters of the Rule. As such, the definition of "business opportunity" is modified expressly to include: "providing payment for such services as, for example, stuffing envelopes from the purchaser's home."¹⁷⁶ This is necessary because hucksters who offer envelope stuffing opportunities commonly represent them as employment or quasi-employment opportunities in which they will compensate participants according to the number of envelopes they stuff.¹⁷⁷

¹⁷³E.g., *FTC v. Am. Entm't Distribs.*, No. 04-22431-CIV-Huck (S.D. Fla. 2004); *FTC v. Advanced Pub. Comm'ns Corp.*, No. 00-00515-CIV-Ungaro-Benages (S.D. Fla. 2000); *FTC v. Ameritel Payphone Distribs., Inc.*, No. 00-0514-CIV-Gold (S.D. Fla. 2000); *FTC v. Mktg. and Vending Concepts*, No. 00-1131 (S.D.N.Y. 2000).

¹⁷⁴E.g., *FTC v. Mediworks, Inc.*, No. 00-01079 (C.D. Cal. 2000); *FTC v. Home Professions, Inc.*, No. 00-111 (C.D. Cal. 2000); *FTC v. Data Med. Capital, Inc.*, No. SACV-99-1266 (C.D. Cal. 1999). *See also* *FTC v. AMP Publ'n, Inc.*, No. SACV-00-112-AHS-ANx (C.D. Cal. 2000).

¹⁷⁵E.g., *FTC v. Misty Stafford*, No. 3: CV 05-0215 (M.D. Pa. 2005); *FTC v. USS Elder Enter. Inc.*, No. SACV-04-1039 AHS (ANx) (C.D. Cal. 2004); *FTC v. Holiday Magic*, No. C. 93-4038 VRW (N.D. Cal. 1994).

¹⁷⁶ RPBOR, Section 437.1(c)(3)(iii).

¹⁷⁷E.g., *FTC v. Group C Marketing, Inc.*, No. CV-06-06019 (C.D. Cal. 2006) (defendants represented they would pay \$7 for every envelope consumers stuffed); *FTC v. Gregory Bryant*, No. 3:04-CV-897-J-32MMH (M.D. Fla. 2004) (defendants represented they would pay \$4 for every envelope consumers stuffed and mailed); *FTC v. America's Shopping Network, Inc.*, No. 02-80540-CIV-Hurley (S.D. Fla. 2002) (promising to pay \$635 per week for processing mail); *FTC v. Darrell Richmond*, No. 3:02-3972-22 (D.S.C. 2002) (offering to pay \$2 per envelope stuffed); *FTC v. Financial Resources Unlimited*, No. 03-C-8864 (N.D. Ill. 2003) (offering to pay \$10 per envelope).

The RPBOR would exclude from its scope those commercial arrangements where the only assistance the seller provides is tracking payments. By so doing, the Commission takes MLM companies out of the ambit of the Rule. Likewise, the RPBOR would exclude those sellers that offer assistance only in: "Advising or training, or purporting to advise or train, the purchaser in the promotion, operation, or management of a new business, or providing, or purporting to provide, the purchaser with operational, managerial, technical, or financial guidance in the operation of a new business."¹⁷⁸ While the Commission's law enforcement experience shows that the promise of such assistance is a feature of many fraudulent business opportunity ventures, such as vending opportunities, rack display schemes, and medical billing work-at-home schemes,¹⁷⁹ these schemes are captured adequately within the scope of the RPBOR. Defining "business assistance" to include such advising or training would incorporate such a broad array of traditional activities in legitimate commercial relationships that the costs would outweigh the benefits that would be generated as a result of including these

¹⁷⁸*See* IPBOR, 437.1(c)(5). Similarly, the RPBOR also eliminates the term "training" from the IPBOR's definition of the term "providing locations, outlets, accounts, or customers." *See* IPBOR, 437.1(n). In the RPBOR, "providing locations" remains a form of business assistance that would trigger the coverage of the rule. *See* RPBOR, 437.1(c)(3)(ii) and 437.1(l). This change avoids the possibility that the use of the term "training" in the definition of "providing locations," at Section 437.1(l), could be interpreted as a "catch-all" inadvertently sweeping into the ambit of the rule such businesses as manufacturers that provide sales training or educational institutions. However, the elimination of the word "training" from the definition of "providing locations" does nothing to erode the long-standing interpretation of "location assistance" in the original Franchise Rule to reach, potentially, circumstances where a seller "instructs investors on how to find their own profitable locations." Staff Advisory Opinion 95-10, Bus. Franchise Guide (CC) ¶ 6475 (1995) (noting that assistance must be more than nominal). The Commission solicits comment on whether the revision to Section 437.1(l) cures potential overbreadth without sacrificing the full extent of coverage of the original rule, as described in Staff Advisory Opinion 95-10.

¹⁷⁹E.g., *FTC v. Inspired Ventures, Inc.*, No. 02-21760-CIV-Jordan (S.D. Fla. 2002); *FTC v. Inv. Dev. Inc.*, No. 89-0642 (E.D. La. 1989); *FTC v. Home Professions, Inc.*, No. 00-111 (C.D. Cal. 2000); *FTC v. Star Publ'g Group, Inc.*, No. 00-023 (D. Wyo. 2000); *FTC v. Hi Tech Mint Sys., Inc.*, No. 98 CIV 5881 (JES) (S.D.N.Y. 1998); *FTC v. Fresh-O-Matic Corp.*, No. 96-CV-315-CAS (E.D. Mo. 1996); *FTC v. Joseph Hayes*, No. 4:96CV06126SNL (E.D. Mo. 1996). *See* Illinois Act, 815 ILCS at § 602/5-5.15 (The seller offers a marketing plan, defined as "advice or training . . . includ[ing], but not limited to . . . training, regarding the promotion, operation or management of the business opportunity; or operational, managerial, technical, or financial guidelines or assistance.").

¹⁷² IPBOR, § 437.1(d), 71 FR 19054 at 19087 (Apr. 12, 2006). (Emphasis supplied.)

types of business assistance. For example, it could introduce the unintended and unappealing specter of regulating certain educational offerings.¹⁸⁰ It also could include manufacturers who provide product and sales training to third-party retailers.¹⁸¹ Therefore, the RPBOR excludes “advising or training” as a form of assistance that would trigger application of the Rule.

3. Earnings claims

One major revision to the IPBOR is that the making of an earnings claim no longer is sufficient to bring a commercial arrangement within the definition of “business opportunity.” This revision addresses the concerns that numerous commenters articulated, namely, that because the definition of “earnings claim” is very broad, the IPBOR’s definition of business opportunity would transform common commercial transactions into “business opportunities.”¹⁸²

The Commission considered but does not believe that narrowing the definition of “earnings claims” effectively addresses concerns with over breadth. Moreover, narrowing the definition of “earnings claims” could weaken protections on the most salient feature of the sales presentation by allowing sellers to avoid disclosing the numbers of people who, for example, earned enough money to “buy a Porsche,” or earned the top level of compensation on an earnings matrix.¹⁸³ Earnings claims lie at the heart of business opportunity fraud, and are typically the enticement that persuades consumers to invest their money. The disclosure obligations in the RPBOR, as in the Franchise Rule, are designed to help a consumer identify and evaluate an earnings claim, if one is made, or to arouse suspicion if an earnings claim is made orally but is disclaimed in writing. If the RPBOR were to create opportunity for a potential loophole on this critically important issue, certainly unscrupulous business opportunity sellers would be very quick to exploit it, to the great detriment of consumers.

Therefore, the Commission believes a better approach is to tailor the substantive scope of the Rule rather than to narrow or restrict the definition of “earnings claims.” The RPBOR is intended to cover all variations of earnings representations that the Commission’s law enforcement

experience shows are associated with business opportunity fraud. Indeed, the definition of earnings claims is longstanding, as it is taken from the description of earnings claim in the original Franchise Rule, and incorporates examples taken from the UFOC Guidelines as well as the Interpretive Guides to the Franchise Rule.¹⁸⁴

The Commission does not believe that this change undermines the utility of the RPBOR in addressing fraud in connection with earnings claims. It simply unlinks the definition of “business opportunity” from the making of an earnings claim.

b. Proposed Section 437.1(d): “Designated person”

The RPBOR makes a minor modification to the IPBOR’s definition of “designated person.” The IPBOR’s definition ended with an example of the type of person who could be considered a “designated person,” which included, without limitation, “any person who finds or purports to find locations for equipment.” The RPBOR eliminates this concluding language because the definition of “business opportunity” lists the types of assistance a “designated person” might render or purport to render. To avoid any possibility of confusion by including one example but not all three in the definition of “designated person,” the Commission deletes the example. A “designated person” is defined in the RPBOR as “any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business.”

c. Proposed Section 437.1(l): “Providing locations”

Section 437.1(l) of the RPBOR differs in some respects from the analogous provision in the IPBOR. It would define “providing locations, outlets, accounts, or customers” as:

furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; providing a list of locator or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; offering to furnish a list of locations; or otherwise assisting the prospective purchaser in obtaining his or her own

locations, outlets, accounts, or customers.

The RPBOR would alter the definition of “providing locations, outlets, accounts, or customers,” slightly by adding the phrases “providing a list of locator companies” and “offering to furnish a list of locations.” In its comment, the United States Department of Justice, Office of Consumer Litigation (“DOJ”), which has a long history of cooperating with the Commission to enforce the Franchise Rule,¹⁸⁵ pointed out that many fraudulent business opportunities simply provide lists of locators or locations. DOJ noted that while the definition included in the IPBOR could be read to include such scenarios, it would be useful to make the rule cover such practices explicitly. Indeed, DOJ’s concerns resonate with the Commission’s law enforcement experience, and the Commission agrees that the rule text should explicitly address this specific practice. Further, the definition is also modified to incorporate the term “lead generator” into the third clause, thus adding symmetry to the definition, which refers to “lead generators” in all other clauses. Thus, the third clause in Section 437.1(l) now includes: “providing a list of locator or lead generator companies.”

Finally, the words “or training” are deleted from the last clause of Section 437.1(l) to avoid the possibility that it could be interpreted as a “catch-all” capturing any business offering to provide training. The revision leaves intact the phrase “or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers.” To determine whether a seller provides the requisite assistance in providing locations, outlets, accounts or customers, the Commission will continue to apply its longstanding analysis, which considers the kinds of assistance the seller offers and the significance of that assistance to the prospective purchaser (e.g. whether the assistance is likely to induce reliance on the part of the prospective purchaser).¹⁸⁶

2. Proposed Section 437.3: The Basic Disclosure Document

Proposed Section 437.3 specifies the items of material information that must be included in the basic disclosure document. As explained in the NPR, the seller of the business opportunity is the

¹⁸⁵ As it points out in its comment, between 1995 and July of 2006, DOJ filed 61 lawsuits alleging Franchise Rule violations by 145 defendants. DOJ, at 1 n. 1.

¹⁸⁶ See Staff Advisory Opinion 95-10, Bus. Franchise Guide (CC) ¶ 6475 (1995). See also supra note 178.

¹⁸⁰ See supra note 45.

¹⁸¹ See Timberland, at 1.

¹⁸² E.g., IBA, at 4; PMI, at 2; MMS, at 2; Venable, at 1-2.

¹⁸³ See RPBOR, 437.1(f).

¹⁸⁴ See UFOC Guidelines, Item 19; Staff Advisory Opinion, Handy Hardware Centers, Bus. Franchise Guide (CCH) ¶ 6426 (1980); Interpretive Guides, 44 FR at 49982.

party responsible for providing the basic disclosure document to prospective purchasers, and the seller must present the required information in “a single written document in the form and using the language set forth in Appendix A to part 437.” The Commission has retained an expert to assess the basic disclosure document as proposed, with the objective of achieving a format and content that communicates the material information to consumers. The Commission welcomes comments on all aspects of the RPBOR; commentary on the proposed form, however, would be most useful if accompanied by quantitative or qualitative studies on the effectiveness of the form, with specific suggestions for potential improvement.

The RPBOR makes three modifications¹⁸⁷ to the IBPOR with respect to the information that must be presented on this document: (1) a citation to the Rule would be added to the title of the form; (2) the disclosure of legal actions pertaining to a seller’s sales representatives would be deleted from the form; and (3) the disclosure of the number of cancellations and refund requests would be deleted from the form. These changes are discussed below.

a. Proposed Section 437.3(a): Form of the basic disclosure document

The form and language of the basic disclosure document is set forth in Appendix A to the RPBOR. While the Commission received a plethora of commentary on the substantive disclosures to be included in the basic disclosure document, it received hardly any commentary on the language used in the proposed form. The Commission received a persuasive comment by DOJ, advising the Commission to add to the title a citation to the legal authority requiring the seller to provide the basic disclosure document. The Commission has decided to adopt this suggestion.

As discussed above, DOJ has substantial expertise in enforcing the Franchise Rule, and has the authority to seek civil penalties for violations of trade regulation rules issued pursuant to the FTC Act.¹⁸⁸ To obtain civil penalties for infractions of an FTC rule, however, the government must prove “actual knowledge or knowledge fairly implied on the basis of objective circumstances

¹⁸⁷ Additionally, the “earnings” section of the disclosure document is modified slightly to include a disclosure of earnings claims the seller “has stated or implied.” The use of the past tense makes clear to a seller completing the form that it must identify earnings claims made over the course of marketing the business opportunity to the consumer, and not just those claims made at the moment of providing the disclosure document.

¹⁸⁸ 15 U.S.C. § 56(a)(1); § 45(m)(1)(A).

that such act is unfair or deceptive and is prohibited by such rule.”¹⁸⁹ According to DOJ, its experience is that individuals who market business opportunities sometimes claim that they simply copied their disclosure documents from a previous employer, suggesting that they did not know their disclosure documents were in violation of any rule. Including a short reference to the rule would “eliminate[] any significant question as to whether the defendant had actual or implied knowledge as required by the statute.”¹⁹⁰

The Commission agrees with DOJ. As numerous commenters have noted, law enforcement is critical to eliminating malfeasance from the marketplace.¹⁹¹ DOJ’s suggested minor modification to the form promises to advance the government’s ability to enforce the law through the use of civil penalties. Therefore, the title of the proposed form on Appendix A has been modified to add the language “Required by Federal Trade Commission, 16 C.F.R. Part 437.”

b. Proposed Section 437.3(a)(3): Legal Actions

Proposed Section 437.3(a)(3) would address fraud in the sale of business opportunities by requiring the disclosure of material information about certain prior legal actions¹⁹² involving the company, its directors, and certain sales employees. This requirement is based on analogous provisions of the original Franchise Rule.¹⁹³ Commenters raised two distinct issues regarding the disclosure of prior legal actions. First, some commenters, primarily members of the MLM industry, argued that this disclosure obligation would not result

¹⁸⁹ 15 U.S.C. § 45(m)(1)(A).

¹⁹⁰ DOJ at 2.

¹⁹¹ *E.g.*, Haynesboone, at 5 (urging the Commission to focus more resources on enforcement); DRA, at 2.

¹⁹² The Commission notes that the definition of “actions” in the RPBOR is different from that employed in the amended Franchise Rule. The reason for that and other differences is that the two rules were crafted to achieve different objectives and to govern different types of business transactions. To provide one example, a major objective of the amended Franchise Rule was to harmonize it with various state law requirements and, thus, maximize uniformity of laws at the federal and state level governing business-format franchises. That objective is not present in the effort to amend the interim Business Opportunity Rule. Therefore, there should be no negative inferences drawn from the inclusion in or exclusion from the RPBOR of any particular terms used in the amended Franchise Rule.

¹⁹³ The Commission stated in the original Franchise Rule’s SBP that litigation history is material because it bears on the “integrity and financial standing of the [seller].” 43 FR at 59649. A disclosure of litigation history is also incorporated into the interim Business Opportunity Rule. 16 CFR 437.1(a)(4).

in consumers receiving meaningful information, and could unfairly tarnish the image of a seller who has been sued but has not been found liable.¹⁹⁴ Second, some commenters argued that state laws conflict with the requirement in the IPBOR that sellers report the litigation histories of their sales employees.¹⁹⁵

With respect to the first point, the Commission disagrees that the disclosure of prior legal actions does not impart meaningful information to consumers. This and other proposed material disclosures on the form are intended to help consumers understand and assess the risks of their prospective investment. The Commission believes that information about litigation history in the areas of “misrepresentation, fraud, securities law violations, or unfair or deceptive practices,” is material to assessing that risk. Indeed, discovering that a seller has a history of violating laws and regulations is perhaps the best indication that a particular business opportunity is a high-risk investment. In the Commission’s law enforcement experience, business opportunity promoters have failed to disclose such material information to prospective purchasers, to the detriment of those purchasers.¹⁹⁶ Regarding the concern that businesses will be unfairly tarnished, nothing in the RPBOR prevents the seller from speaking with the consumer to explain the nature or outcome of any legal action disclosed on the form.¹⁹⁷

¹⁹⁴ *E.g.*, Melaleuca, at 6; Quixtar, at 35; Amsoil, at 2; Babener, at 2.

¹⁹⁵ Venable, at 11; Chadbourne, at 20; Shaklee, at 10, 12.

¹⁹⁶ *E.g.*, *FTC v. Success Vending Group, Inc.*, No. CV-S-05-0160-RCJ-PAL (D. Nev. 2005) (failure to disclose guilty plea for mail fraud and previous injunction); *FTC v. Netfran Development Corp.*, No. 1:05-cv-22223-UU (S.D. Fla. 2005) (failure to disclose FTC injunction against principal); *FTC v. American Entm’t Distribs., Inc.*, No. 04-22431-Civ-Martinez (S.D. Fla. 2004) (failure to disclose prior FTC injunction); *United States v. We The People Forms and Serv. Centers USA, Inc.*, No. CV 04 10075 GHK FMOx (C.D. Cal. 2004) (failure to disclose prior lawsuits); *FTC v. Joseph Hayes, No. Civ. 4:96CV02162SNL (E.D. Mo. 1996)* (failure to disclose prior state fines and injunctive actions); *FTC v. WhiteHead, Ltd.*, Bus. Franchise Guide (CCH) ¶ 10062 (D. Conn. 1992) (failure to disclose fraud action); *FTC v. Inv. Dev. Inc.*, Bus Franchise Guide (CCH) ¶ 9326 (E.D. La. 1989) (failure to disclose insurance fraud convictions).

¹⁹⁷ As noted above, some members of the MLM industry voiced concern about making extensive litigation disclosures because they are affiliated with numerous other companies. In the context of such an MLM, it could be impractical for a consumer to ask about every legal action listed on the disclosure form, and thus, the form itself may be unduly prejudicial to the MLM. Given the RPBOR as now tailored, such concerns are unlikely

With respect to the second issue concerning the disclosure of legal actions pertaining to sales employees, IPBOR, 437.3(a)(3)(D), the Commission believes it would be appropriate to exclude these employees from the disclosure requirement. Some commenters suggested that this provision would be inconsistent with state employment laws, but they did not cite to specific statutes in which a conflict would necessarily arise.¹⁹⁸ The IPBOR's requirement to disclose the litigation history of sales employees was intended to enable a prospective purchaser to evaluate the representations made by a sales person. The Commission now believes that the burden of collecting litigation histories for every sales person is not outweighed by the corresponding benefit to prospective purchasers. In the Commission's law enforcement experience, sales representatives often work from sales scripts that someone with supervisory authority has developed. A problem emerges when companies conceal the litigation history of the person with supervisory authority by claiming that individual is just a sales person. The Commission believes that it is sufficient to require business opportunity sellers to disclose the litigation histories of their principals, officers, directors, and sales managers, as well as any individual who occupies "a position or performs a function similar to an officer, director, or sales manager of the seller." In this way, the RPBOR is sufficient to enable prospective purchasers to ferret out situations where recidivists, ostensibly employed as sales personnel, in fact function as de facto officers or directors. Therefore, in the RPBOR, the Commission deletes paragraph (D) from section 437.3(a)(3) of the IPBOR.

c. Proposed Section 437.3(a)(4): Cancellation or refund history

Section 437.3(a)(4) of the IPBOR would have required a seller both to state on the basic disclosure document whether it has a cancellation or refund policy, and to disclose the number of purchasers who had asked to cancel or who had sought a refund in the two previous years.¹⁹⁹ This second disclosure was included as a remedy

to be raised in the context of typical business opportunity schemes.

¹⁹⁸ Venable, at 11; Chadbourne, at 20; Shaklee, at 10, 12. A California statute forbids employers from inquiring into histories of arrests that did not result in convictions. Cal. Lab. Code Ann. § 432.7(a) (Deering 2007). It is not clear how this would conflict with the RPBOR, which would not require disclosure of arrest records.

¹⁹⁹ IPBOR, 437.3(a)(5).

against false representations about the success of prior purchasers. This is a misrepresentation the Commission has observed in many of its law enforcement actions against fraudulent business opportunity sellers.²⁰⁰ In the NPR, the Commission specifically sought comment on the proposed disclosure of the seller's refund history, particularly on the likely effect this disclosure might have on the willingness of sellers to offer refunds.²⁰¹ Based upon the arguments articulated in the comments to the NPR, the Commission no longer believes this second disclosure is useful, and revises 437.3(a)(4) accordingly.

Some commenters persuasively argued that requiring disclosure of a seller's refund history would have the perverse effect of discouraging legitimate businesses from offering refunds.²⁰² Commenters argued that legitimate businesses often have liberal refund policies so they can provide a low-risk opportunity. If they were required to track and disclose the number of purchasers who took advantage of the refund policy, however, the disclosure of such information might create a misleading impression of general dissatisfaction. It might cause prospective purchasers to misinterpret risk, and therefore eschew a safe opportunity.

The Commission is persuaded that the disclosure of refund history could be unduly prejudicial to business opportunities that offer and liberally provide refunds to prior purchasers. Indeed, a prospective purchaser might compare the refund requests of a fraudulent seller with no refund policy against a legitimate seller with a liberal refund policy and inappropriately conclude that the legitimate seller offers a riskier business venture. Thus, the disclosure would not reliably remedy deception on this issue. Furthermore, the most important piece of information for consumers is not how many individuals sought refunds, but what are the particular requirements of the refund or cancellation policy. This information is not likely to create perverse results or mistaken impressions. Therefore, Section 437.3(a)(4) of the RPBOR requires disclosure of the refund policy, but

²⁰⁰ *E.g.*, *FTC v. National Vending Consultants, Inc.*, CV-S-05-0160-RCJ (PAL) (D. Nev. 2005); *FTC v. Fidelity ATM, Inc.*, No. 06-CIV-81101 (S.D. Fla. 2006).

²⁰¹ 71 FR at 19070.

²⁰² *See supra* note 72. The comments on this issue came from members of the MLM industry. While the RPBOR has been pared back to exclude MLMs, the Commission is persuaded that their commentary on this issue can be applied to business opportunities that remain within the scope of the Rule.

eliminates section 437.3(a)(5) of the IPBOR, which would have required disclosure of the seller's refund history.²⁰³

d. Proposed Section 437.3(a)(6): References

After analyzing commentary to Section 437.3(a)(6) of the RPBOR, the Commission leaves intact the IPBOR's language requiring the disclosure of a limited number of prior purchasers as references.²⁰⁴ The Commission believes that the disclosure of prior purchasers is very important to prevent fraud because it enables prospects to evaluate the seller's claims based on information from an independent source with relevant experience. The Commission had solicited comment and suggestions on balancing the need to enable prospective purchasers to verify sellers' claims with privacy concerns.²⁰⁵ In addition to seeking comment on possible alternatives, the Commission sought comment on whether the Rule should permit purchasers the opportunity to opt-out of the disclosure of their contact information.²⁰⁶

The MLM industry articulated concerns peculiar to its business model, but these provisions would no longer apply to MLM companies inasmuch as these companies, and their representatives, are excluded from the ambit of the RPBOR.

The MLM comments also suggested, more broadly, that the reference disclosure requirement raised privacy and security concerns.²⁰⁷ The Commission believes that the very limited proposed reference disclosure does not raise security concerns because the required disclosures include no sensitive personal information whatsoever, no social security numbers, birth dates, or financial account numbers. The disclosure requirement of nothing more than name, city, state, and telephone number—covers less information than may be commonly available in public telephone books.

On the topic of privacy concerns, the Commission received a few comments in support of allowing individual business opportunity purchasers to opt

²⁰³ This change reverts back to the requirements of the original Franchise Rule which did not require a business to tally the number of refund or cancellation requests but did require disclosure of refund policies. *See* 16 CFR 437.1(a)(7) (interim Business Opportunity Rule).

²⁰⁴ The requirement to disclose prior purchasers was in original Franchise Rule, and is now in the interim Business Opportunity Rule. *See* 16 CFR 437.1(a)(16)(iii).

²⁰⁵ NPR, 71 FR at 19071.

²⁰⁶ *Id.*

²⁰⁷ *E.g.*, Quixtar, at 33; Babener, at 2; Pre-Paid Legal, Rebuttal, at 8; DRA, at 6.

out of having their contact information disclosed.²⁰⁸ DOJ, however, urged the Commission to reject any opt-out: “The Rule should not permit such an opt-out. It would be an easy matter for telemarketers to talk consumers into opting out, describing to them what a hassle it becomes for those who do not opt-out because of all the demand that arises for their time and attention.”²⁰⁹ The Commission agrees with DOJ that it is critical to provide prospective purchasers with a true list of prior purchasers. By investing in a business opportunity, these purchasers are entering the world of commerce and embarking upon the establishment of a business. Businesses generally hold themselves out as offering goods and services to the public.²¹⁰ Therefore, the Commission believes that the value to prospects of information about prior purchasers outweighs any potential detriment to prior purchasers of the disclosure of their contact information. The RPBOR leaves intact section 437.3(a)(6).

3. Proposed Section 437.4: The Earnings Claim Document

Apart from the comments submitted by the MLM industry, the Commission received little comment on the provisions in the proposed earnings claim document. The one aspect of these provisions that drew the most scrutiny from commenters was section 437.4(a)(vi), which requires sellers who make earnings claims to disclose “any characteristics of the purchasers who achieved at least the represented level of earnings, such as their location, that

²⁰⁸ E.g., Scarlet Leverton (affiliated with Lia Sophia); Kay Gidley (affiliated with Universa Life Sciences); Joseph McGarry (affiliated with Quixtar). These comments express generalized privacy concerns.

²⁰⁹ DOJ, at 3.

²¹⁰ Notably, federal law often focuses on privacy concerns affecting individuals, not businesses. For example, Congress specifically focused on the need to respect “the consumer’s right to privacy,” in enacting the Fair Credit Reporting Act (“FCRA”). 15 U.S.C. 1681(a)(4). The FCRA requires various protections for consumer information, including provisions addressing identity theft, but there is no comparable statute that protects business information. Similarly, Congress enacted the Graham-Leach-Bliley Act to protect personal financial information of individual consumers but excluded from the ambit of the law the protection of information pertaining to businesses. Graham-Leach-Bliley Act, 15 U.S.C. 6809 (9) (defining “consumer” to include individuals who obtain financial products or services for personal, family or household purposes). See also Privacy of Consumer Financial Information, 16 CFR 313.1(b) (expressly stating that it “does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes.”); Standards for Safeguarding Customer Information, 16 CFR 314.2(b) (defining “customer” by reference to Part 313).

may differ materially from the characteristics of the prospective purchasers being offered the business opportunity.” Here, commenters—primarily from the MLM industry—argued that it would be extremely costly to undertake an analysis of the various characteristics that successful purchasers had in common.²¹¹ MLM companies peculiar concerns are no longer relevant inasmuch as they are excluded from the scope of the RPBOR.

The Commission has decided to retain this provision in the RPBOR because the information disclosed is material; it is intended to enable the prospect to determine whether the claimed earnings of prior purchasers are typical in the prospect’s market. Furthermore, the business opportunity seller is in the best position to know what set of characteristics, such as location in densely-populated areas, tend to make their purchasers successful. The amended Franchise Rule imposes an analogous obligation,²¹² and indeed, the RPBOR’s earnings disclosure obligation is similar to what the interim Business Opportunity Rule already requires.²¹³ The Commission continues to seek comment on this topic, particularly on the question of the burdens upon business against the benefit to prospective purchasers.²¹⁴

On its own initiative, the Commission has decided to modify slightly another provision of the IPBOR, section 437.4(a)(4)(v). Section 437.4(a)(4)(iv) requires sellers who make earnings claims to disclose the “beginning and ending dates when the represented earnings were achieved,” and section 437.4(a)(4)(v) of the IPBOR further required disclosure of the “number and percentage of all purchasers during the stated time period who achieved at least the stated level of earnings.” The revision clarifies a potential ambiguity: the purchasers who must be counted are

²¹¹ E.g., MLMIA, at 41 (“No one can hope to substantiate accurately an earnings claim in a way that would take into account and disclose every factor material to each person’s earnings and to contrast that with the characteristics of each prospective purchaser without the expert advice of a person trained in marketing and economics at the graduate level who in addition has experience in making these kinds of assessments.... Legal and marketing consultants are expensive.”).

²¹² 16 CFR 436.5(s)(3)(ii)(A).

²¹³ The interim Business Opportunity Rule requires earnings claims be presented with a statement of the material bases and assumptions upon which the claim is made. 16 CFR 437.1(b)(3); 437.1(c)(3).

²¹⁴ As noted earlier, even without the RPBOR, any seller who makes an earnings claim must be truthful in that assertion and must substantiate the claim. If a seller makes an earnings claim that is only relevant to a narrow subset of purchasers and the seller fails to disclose that fact, the claim would violate Section 5 of the FTC Act.

all those who purchased the business opportunity before the ending date when the represented earnings were achieved, not just individuals who purchased the business opportunity during the stated time period. Thus, under the RPBOR’s section 437.4(a)(4)(v), the seller must disclose: “The number and percentage of all persons who purchased the business opportunity prior to the ending date in (iv) above who achieved at least the stated level of earnings.”

4. Proposed Section 437.5: Other Prohibited Practices

In addition to mandating disclosures to prospective purchasers, the IPBOR would have prohibited sellers from engaging in a number of deceptive practices. The RPBOR retains these prohibitions, and would add: (1) a substantive prohibition to section 437.5(e), and (2) clarifying language to section 437.5(r). Each of these changes is discussed immediately below.

a. Proposed Section 437.5(e): Misrepresenting the Law

The IPBOR would have prohibited sellers from “[m]isrepresenting that any governmental entity, law, or regulation prohibits a seller from furnishing earnings information to a prospective purchaser.” The RPBOR would add a second numbered clause, further prohibiting misrepresentations that any governmental entity, law or regulation prohibits a seller from “disclosing to prospective purchasers the identity of other purchasers of the business opportunity.” DOJ suggests the above modification because, in its law enforcement experience, it has encountered “numerous fraudulent business opportunity sellers who deflect consumer requests for current distributors by falsely claiming that the law forbids disclosing their identity, which of course, is exactly the opposite of the truth.”²¹⁵ The Commission agrees that such a prohibition is appropriate, and will help consumers understand that if the seller supplies no references, it is because none exists or because the seller chooses not to make such information available, which would contravene the RPBOR. Furthermore, the prohibition on making false statements imposes no costs on legitimate companies, and as such, serves simply to confer a significant benefit to consumers.

²¹⁵ DOJ, at 2.

b. Proposed Section 437.5(r): Failure to Disclose Payment of References

The RPBOR is intended to prohibit sellers from failing to disclose payments to individuals identified as references or personal relationships with such individuals. However, the language of the second clause of this paragraph in the IPBOR does not state that what must be disclosed is the relationship between the seller and the reference.²¹⁶ Therefore, the RPBOR adds clarifying language to the opening clause of section 437.5(r), so that it prohibits a failure to disclose, “with respect to any person identified as a purchaser or operator of a business opportunity offered by the seller,” any consideration paid, any personal relationship, or other unrelated business relationship.

c. Proposed Section 437.5(c): Extraneous Materials

Like the IPBOR, the RPBOR’s Section 437.5(c) would prohibit the inclusion of any additional information in a disclosure document that is not explicitly required or permitted by the Rule. The point of the prohibition is to preserve the clarity, coherence, readability, and utility of the disclosures by ensuring that the seller does not clutter the disclosure document. The Commission sought comment on whether it is appropriate to prohibit sellers from including in their disclosure documents additional disclosures required by state business opportunity laws.

DOJ urged the Commission to exclude state disclosures from the proposed form. In DOJ’s experience, “[p]urveyors of fraudulent business opportunities will seek every opportunity to water down this document with extraneous information to hide any negative information it may contain.”²¹⁷

The original Franchise Rule permitted the inclusion of state mandated disclosures in the federal disclosure document, where the state disclosures provided equal or greater protection to prospective purchasers.²¹⁸ However, the original Franchise Rule required a very lengthy disclosure, which included more than 20 categories of information. Any additional state disclosures that afforded greater protections to prospective purchasers were generally minor additions that could be easily accommodated.²¹⁹

The Commission agrees with DOJ that state disclosures should not be bundled in to the same document with the proposed federal disclosure, and therefore, the RPBOR retains Section 437.5(c) of the IPBOR. One important goal of revising and tailoring the disclosure requirements of the Franchise Rule for business opportunity promoters is to simplify and streamline the disclosures into a single page document. Allowing business opportunity promoters to mix federal and state disclosures into one document would be an invitation to sellers to present lengthy and confusing information to prospective purchasers. Such a result would be contrary to the Commission’s goal of providing a simple, clear, and concise disclosure document.

5. Proposed Section 437.7: Exemptions

Section 437.7 of the IPBOR identifies entities that would be exempt from complying with the Business Opportunity Rule. The exemption applies to business opportunities that constitute franchises, and it was designed to eliminate the possibility that a business would face duplicative compliance burdens under the Business Opportunity Rule and the amended Franchise Rule. However, it was also designed to ensure that certain franchises exempt from the requirements of the Franchise Rule—namely, those falling under the minimum payment exemption or the oral agreement exemption²²⁰—would be covered by the Business Opportunity Rule. To add precision and clarity to this provision, the RPBOR revises Section 437.7 to adopt the language of the amended Franchise Rule describing the relevant exemptions and to add specific citations to the relevant provisions of Part 436.

Many commenters argued for additional changes to the IPBOR, including changing the definition of “new business,” exempting purchasers of sufficient net worth, excluding transactions above a monetary threshold, such as \$50,000.²²¹ These commenters essentially argued that the Rule’s application should encompass only those transactions involving the vulnerable or unsophisticated purchasers that they posited the Rule seeks to protect, and that exemptions should be written into the Rule for

sophisticated businesses that do not need its burdens or protections.²²²

Having narrowed the scope of the proposed Rule considerably, the Commission believes it has tailored the Rule’s application to cover only those business opportunities where fraud is most likely to occur. In the Commission’s law enforcement experience, these business opportunities can cost tens of thousands of dollars, and seldom, if ever, involve seasoned purchasers with sufficient expertise to negotiate the terms of the transaction. There is an insufficient basis at this time to conclude that further exemptions are necessary to avoid covering transactions between sophisticated business people. However, the Commission continues to solicit comment on whether the proposed modifications to the scope of the Rule adequately capture the marketplace in which fraud is prevalent or whether it is needlessly over-inclusive.

Section E Rulemaking Procedures

Pursuant to 16 CFR 1.20, the Commission will use the following rulemaking procedures. These procedures are a modified version of the rulemaking procedures specified in Section 1.13 of the Commission’s Rules of Practice.

First, the Commission is publishing this Revised Notice of Proposed Rulemaking. The comment period will be open until May 27, 2008, followed by a rebuttal period until June 16, 2008. Interested parties are invited to submit written comments. Written comments must be received on or before May 27, 2008. Rebuttal comments must be received on or before June 16, 2008. All comments should be filed as prescribed in the **ADDRESSES** section above.

Second, pursuant to Section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c), the Commission will hold hearings with cross-examination and rebuttal submissions only if an interested party requests a hearing by the close of the comment period. In view of the substantial revisions to the NPR, the Commission has held in abeyance the hearing requests submitted in response to the NPR. Individuals who continue to be interested in a hearing should, therefore, renew and resubmit their requests in comments responding to this Revised NPR. Parties interested in a hearing must submit within the comment period the following: (1) a comment in response to this notice; (2) a statement how they would participate in a hearing; and (3) a summary of their expected testimony. Parties wishing to

²¹⁶ This omission was noted in DOJ’s comment, at 2.

²¹⁷ DOJ, at 3.

²¹⁸ Original Franchise Rule, 16 CFR 436.1(a)(21).

²¹⁹ See Informal Staff Advisory Opinion, Bus. Franchise Guide (CCH), Paragraph 6410 (April 15, 1980) (noting that there were only three additional

disclosures that Florida required affording greater protection than the Franchise Rule).

²²⁰ Amended Franchise Rule, 16 CFR 436.8(a)(1) & (a)(7).

²²¹ Sonnenschein, at 2, 5, 6; Snell, at 2, 4.

²²² Id.

cross-examine witnesses must also file a request by the close of the 20-day rebuttal period, designating specific facts in dispute and a summary of their expected testimony. If requested to do so, the Commission may hold one or more informal public workshop conferences in lieu of hearings. After the close of the comment period, the Commission will publish a notice in the **Federal Register** stating whether hearings (or a public workshop conference in lieu of hearings) will be held and, if so, the time and place of the hearings and instructions for those wishing to present testimony or engage in cross-examination of witnesses.

Finally, after the conclusion of the rebuttal period, and any hearings or additional public workshop conferences, Commission staff will issue a Report on the Business Opportunity Rule ("Staff Report"). The Commission will announce in the **Federal Register** the availability of the Staff Report and will accept comment on the Staff Report for a period of 75 days.

Section F Communications to Commissioners and Commissioner Advisors by Outside Parties

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such oral communications are permitted only if advance notice is published in the Weekly Calendar and Notice of "Sunshine" Meetings.²²³

Section G Paperwork Reduction Act

The Commission is submitting this proposed Rule and a Supporting Statement for Information Collection Provisions to the Office of Management and Budget ("OMB") for review under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501-3521. In this notice, the Commission proposes to amend a trade regulation rule governing business opportunity sales. The proposed Rule would cover those business opportunities currently covered by the

interim Business Opportunity Rule (and formerly covered by the original Franchise Rule, as explained above), as well as certain others not covered by the interim Business Opportunity Rule, including work-at-home programs. The proposed Rule would require business opportunity sellers to disclose specified information and to maintain certain records relating to business opportunity sales transactions.

The currently approved estimates for disclosure and recordkeeping burden under the interim Business Opportunity Rule, Part 437, includes 16,750 hours for business opportunity sellers. That estimate was based on an estimated 2,500 non-exempt business opportunity sellers.²²⁴ As discussed below, the proposed Rule would reduce the burden on business opportunity sellers by streamlining disclosure requirements to minimize compliance costs.²²⁵

The proposed Rule is designed to streamline and reduce substantially the quantity of information business opportunity sellers would be required to disclose. The proposals would impact such sellers differently, depending upon whether they are currently covered by the interim Business Opportunity Rule. The Commission staff estimates that there are approximately 3,050 business opportunity sellers, comprised of some 2,500 vending machine, rack display, and related opportunity sellers, and 550 work-at-home opportunity sellers.

For the 2,500 vending machine, rack display, and related opportunity sellers presently covered by the interim Business Opportunity Rule, the proposed Rule would reduce the number of disclosures from 20 categories of information to four mandatory disclosures pertaining to earnings claims, lawsuits, refund policy, and references. For the 550 business opportunity sellers presently exempted from the interim Business Opportunity Rule, the disclosures, as noted below, are streamlined to minimize compliance costs.

1. Reduced Mandatory Disclosures

The RPBOR contains four mandatory disclosures pertaining to earnings claims, lawsuits, refund policy, and references. With respect to earnings claims, business opportunity sellers must disclose whether or not they make earnings claims. However, the decision

²²⁴ 71 FR at 19,081; 70 FR 51,818, 51,819 (August 31, 2005).

²²⁵ If the Commission ultimately amends the interim Business Opportunity Rule, FTC staff will seek all necessary PRA clearances and/or adjustments. The amended Franchise Rule and interim Business Opportunity Rule have OMB clearance through October 31, 2008.

to make an earnings claim is optional. While the disclosures of references and earnings claims retain, for the most part, the interim Business Opportunity Rule requirements, the required disclosure of lawsuits is reduced from the interim Business Opportunity Rule.

As noted above, the interim Business Opportunity Rule requires an extensive list of suits that must be disclosed including those involving allegations of fraud, unfair or deceptive business practices, embezzlement, fraudulent conversion, misappropriation of property, and restraint of trade. Business opportunity sellers also must disclose suits filed against them involving the business opportunity relationship. 16 CFR at 437.1(a)(4). In contrast, the proposed Rule's lawsuit disclosure requirements are limited to suits for misrepresentation, fraud, or unfair or deceptive business practices only.

2. Incorporation of existing materials

The RPBOR also reduces collection and dissemination costs by permitting sellers to reference in their disclosure documents materials already in the possession of the seller. For example, a seller need not repeat its refund policy in the text of the disclosure document, but may attach its contract or brochures, or other materials that already provide the necessary details.

3. Use of electronic dissemination of information

The RPBOR defines the term "written" to include electronic media. Accordingly, all business opportunities covered by the RPBOR are permitted to use the Internet and other electronic media to furnish disclosure documents. Allowing this distribution method could greatly reduce sellers' compliance costs over the long run, especially costs associated with printing and distributing disclosure documents. As a result of this proposal, the Commission expects sellers' compliance costs will decrease substantially over time.

4. Use of computerized data collection technology

Finally, because of advances in computerized data collection technology, the Commission anticipates that the costs of collecting information and recordkeeping requirements imposed by the RPBOR will be minimal. For example, a seller can easily maintain a spreadsheet of its purchasers, which can be sorted by location. This would enable a seller to comply easily with the proposed reference disclosure requirement (at least 10 prior purchasers in the last

²²³ See 15 U.S.C. 57a(i)(2)(A); 45 FR 50814 (1980); 45 FR 78626 (1980).

three years who are located nearest the prospective purchaser, or, if there are not 10 prior purchasers, then all prior purchasers). In the alternative, the RPBOR permits a seller to maintain a national list of purchasers.

As a result of these proposals, the Commission estimates that the 3,050 business opportunity sellers will require between three hours and five hours each to develop a Rule-compliant disclosure document.²²⁶ On the lower end, the staff estimates that for existing businesses that have not been covered by the interim Business Opportunity Rule but will be covered by the RPBOR, such as work-at-home schemes, the time required for making a new disclosure document is approximately 5 hours. By contrast, businesses that have been covered by the interim Business Opportunity Rule will already have a disclosure document which will just need updating to meet the requirements of the RPBOR. The staff estimates that these 2,500 businesses will likely need only 3 hours to perform the necessary updating to the disclosure document. Therefore, the hours required to develop a disclosure document in the first year would be approximately 10,250 ((550 x 5 hours) + (2,500 x 3 hours)). In addition, staff estimates these entities will require between one and two hours to file and store records per year, for a total of 6,100 hours (3,050 x 2 hours). Staff assumes that in many instances an attorney likely would prepare or update the disclosure document, at an estimated hourly rate of \$250. The Commission estimates that the total number of hours initially to comply with the Rule would be approximately 16,350 (10,250 disclosure-related hours + 6,100 recordkeeping hours), at a total cost of \$4,087,500 (16,350 x \$250).

FTC staff expects that the annual burden will diminish after the first year to two hours to prepare disclosures and between one and two hours of recordkeeping, resulting in approximately 12,200 hours per year (3,050 x 4 hours) or fewer, for a total cost of \$3,050,000 (12,200 hours x \$250). To the extent that disclosure or recordkeeping obligations are performed by clerical staff, the labor costs initially and thereafter would be significantly less.

The Commission invites comments that will enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical utility;
2. Evaluate the accuracy of the Commission's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, usefulness, and clarity of the information to be collected; and
4. Minimize the burden of 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, for example, permitting electronic submission of responses.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

OMB will act on this request for review of the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days of publication. This does not affect the deadline for the public to comment to the FTC on the proposed regulation.

Section H Regulatory Analysis

Section 22 of the FTC Act, 15 U.S.C. 57b, requires the Commission to issue a preliminary regulatory analysis when publishing a Notice of Proposed Rulemaking, but requires the Commission to prepare such an analysis for a rule amendment proceeding only if it:

- (1) estimates that the amendment will have an annual effect on the national economy of \$100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. To the extent that

this Document constitutes a Notice of Proposed Rulemaking, the Commission has set forth in Section I below, in connection with its Initial Regulatory Flexibility Analysis ("IRFA") under the Regulatory Flexibility Act, and has discussed elsewhere in this Document: (1) the need for and objectives of the proposed Rule (see IRFA ¶ 2); (2) a description of reasonable alternatives that would accomplish the Rule's stated objectives consistent with applicable law (see IRFA ¶ 6); and a preliminary analysis of the benefits and adverse effects of those alternatives (see *id.*). The Commission has determined that the proposed amendments to the Business Opportunity Rule will not have such an annual effect on the national economy, on the cost or prices of goods or services sold through business opportunities, or on covered businesses or consumers. As noted in the Paperwork Reduction Act discussion above, the Commission staff estimates each business affected by the Rule will likely incur only minimal compliance costs. Specifically, approximately 3,050 businesses will spend not more than \$1,750 (7 hours x \$250 each) to comply with the proposed Rule and not more than \$1000 (4 hours x \$250 each) to update the four required disclosures on an annual basis. These figures reflect a change in the estimated number of affected businesses, since the estimate now excludes MLM companies. As explained above, the RPBOR no longer sweeps in MLM companies or their networks of distributors. To ensure that the Commission has considered all relevant facts, however, it requests additional comment on these issues.

Section I Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601—612, requires an agency to provide an IRFA with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA") with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603—605. The FTC does not expect that the RPBOR will have a significant economic impact on a substantial number of small entities. The abbreviated disclosure and recordkeeping requirements of the RPBOR are the minimum necessary to give consumers the information they need to protect themselves and permit effective enforcement of the rule. Companies previously covered by the original Franchise Rule and now covered by the interim Business Opportunity Rule, will experience a reduction in their compliance burden,

²²⁶ While commenters from the MLM industry argue that the costs of complying would be significantly higher, see *supra* Section C.2.a., their estimates are based on assumptions that would not apply to more narrow field of the business opportunities that are within the scope of the proposed Rule.

while companies not previously covered will have minimal new disclosure obligations. As such, the economic impact of the RPBOR will be minimal. In any event, the burdens imposed on small businesses are likely to be relatively small, and in the Commission's enforcement experience, insignificant in comparison to their gross sales and profits.

This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis, based on the IRFA set forth in the Commission's earlier notice of proposed rulemaking, after a review of the public comments submitted in response to that notice and additional information and analysis by Commission staff.

1. Description of the Reasons that Action by the Agency Is Being Considered

The Commission's law enforcement experience provides ample evidence that fraud is pervasive in the sale of many business opportunities marketed to consumers. Yet, the Commission believes that the current requirements of the interim Business Opportunity Rule are more extensive than necessary to protect prospective purchasers of business opportunities from deception. The pre-sale disclosures provided by the RPBOR will give consumers the information they need to protect themselves from fraudulent sales claims, while minimizing the compliance costs and burdens on sellers.

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the RPBOR is to provide consumers considering the purchase of a business opportunity with material information they need to investigate the offering thoroughly so they can protect themselves from fraudulent claims, while minimizing the compliance burdens on sellers. The legal basis for the proposed Rule is Section 18 of the FTC Act, 15 U.S.C. 57a, which authorizes the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices in or affecting commerce that are unfair or deceptive within the meaning of Section (5)(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

3. Description of and, Where Feasible, Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The RPBOR primarily applies to "sellers" of business opportunities, including vending, rack display, medical billing, and work-at-home (e.g., craft assembly, envelope stuffing) opportunities. The Commission believes that many of these sellers fall into the category of small entities. Determining the precise number of small entities affected by the RPBOR, however, is difficult due to the wide range of businesses engaged in business opportunity sales. The staff estimates that there are approximately 3,050 business opportunity sellers, including some 2,500 vending machine, rack display, and related opportunity sellers and 550 work-at-home opportunity sellers. The previous IRFA estimated a total of 3,200 business opportunity sellers, including 150 multilevel companies, which are no longer covered by the proposed rule. Most established and some start-up business opportunities would likely be considered small businesses according to the applicable SBA size standards.²²⁷ The FTC staff estimates that as many as 70% of business opportunities, as defined by the Rule, are small businesses. The Commission invites comments and information on this issue.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The RPBOR imposes disclosure and recordkeeping requirements, within the meaning of the Paperwork Reduction Act, on the "sellers" of business opportunities and their principals. These requirements are fewer in number and lesser in extent than requirements currently applicable to such entities now covered by the interim Business

²²⁷ Since October 2000, SBA size standards have been based on the North American Industry Classification System ("NAICS"), in place of the Standard Industrial Classification ("SIC") system. In general, a company in a non-manufacturing industry is a small business if its average annual receipts are \$6.5 million or less. See <http://www.sba.gov/size/indexguide.html>. Thus, the size standard for vending machine operators is \$6.5 million in annual receipts (NAICS 454210), and the same size standard applies to other direct selling establishments (NAICS 454390), marketing consulting services (NAICS 541613), other management consulting services (NAICS 541618) and other business support services (NAICS 561499).

Opportunity Rule and formerly covered by the original Franchise Rule. Section 437.2 of the proposed Rule would require "sellers" of covered business opportunities to provide potential purchasers with a one-page disclosure document, as specified by Section 437.3 and Appendix A, at least seven calendar days before they sign a contract or pay any money toward a purchase. If a seller elects to make an earnings claim, Section 437.4 would require that written substantiation for the claim be provided to the purchaser in a separate "earnings claim statement" document. However, the proposed Rule would not require sellers to make an earnings claim, and thus any compliance costs incurred in connection with such claims are strictly optional.

Section 437.6 of the RPBOR prescribes recordkeeping requirements necessary for effective enforcement of the Rule. Specifically, sellers of a covered business opportunity, and their principals, must retain for at least three years the following types of documents: (1) each materially different version of all documents required by the Rule; (2) each purchaser's disclosure receipt; (3) each executed written contract with a purchaser; and (4) all substantiation upon which the seller relies for each earnings claim made. The RPBOR requires that these records be made available for inspection by the Commission, but does not otherwise require production of the records. The Commission is seeking clearance from the Office of Management and Budget ("OMB") for these requirements, and the Commission's Supporting Statement submitted as part of that process will be made available on the public record of this rulemaking.

As discussed in section H above, FTC staff estimates that the total number of hours initially to comply with the Rule would be 16,350, at a total cost of \$4,087,500 (16,350 x \$250), or less. FTC staff expects that the annual burden of complying with the rule will diminish after the first year, however, to approximately 12,200 hours, at a total cost of \$3,050,000 (12,200 hours x \$250). To the extent that disclosure or recordkeeping obligations are performed by clerical staff, the total labor costs would be substantially less. The change in these estimates from the previous IRFA reflect that the total estimated number of sellers no longer includes multilevel companies.

5. Other Duplicative, Overlapping, or Conflicting Federal Rules

There are no other federal statutes, rules, or policies that would conflict with the RPBOR, which would amend

the Commission's interim Business Opportunity Rule, 16 CFR Part 437.1.

The Commission notes, however, that it is aware that 22 states have statutes specifically governing the sale of business opportunities. The Commission therefore seeks comment and information about any state statutes or rules that may conflict with the proposed requirements, as well as any other state, local, or industry rules or policies that require covered entities to implement practices that conflict or comport with the requirements of the RPBOR.

6. Description of Any Significant Alternatives to the Proposed Rule That Would Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities, Including Alternatives Considered, Such as: (1) Establishment of Differing Compliance or Reporting Requirements or Timetables That Take Into Account the Resources Available to Small Entities; (2) Clarification, Consolidation, or Simplification of Compliance and Reporting Requirements Under the Rule for Such Small Entities; and (3) Any Exemption From Coverage of the Rule, or Any Part Thereof, for Such Small Entities

The RPBOR's disclosure and recordkeeping requirements are designed to impose the minimum burden on all affected business opportunity sellers, regardless of size. In formulating the RPBOR, the Commission has taken a number of significant steps to minimize the burdens it would impose on large and small businesses. These include: (1) limiting the required pre-sale disclosure to a one-page document, with check boxes provided to simplify disclosure responses; (2) allowing the disclosure to refer to information in other existing documents to avoid needless duplication; (3) permitting the disclosure document itself to be furnished in electronic form to minimize printing and distribution costs; and (4) employing specific prohibitions in place of affirmative disclosures whenever possible. Moreover, because the majority of sellers covered by the RPBOR are already required to comply with the Commission's interim Business Opportunity Rule and the business opportunity laws in 22 states, FTC staff anticipates that the RPBOR will drastically reduce their current compliance costs, while imposing exceedingly modest ongoing compliance costs on all covered sellers. Consequently, the Commission believes

that the RPBOR will not have a significant economic impact upon small businesses.

The RPBOR would require business opportunity sellers to provide only four affirmative disclosures in a one-page disclosure document. This is a significant reduction from the 20 disclosures now required by the Commission's interim Business Opportunity Rule, with which many business opportunity sellers are now obligated to comply. The RPBOR limits required disclosures to information about the sellers' litigation history, refund policy, prior purchaser references, and a statement about whether the seller makes an earnings claim. Because the RPBOR does not require sellers to make information about potential earnings available to potential purchasers, such earnings claims are entirely optional. Thus, if sellers make no earnings claims whatsoever, they can avoid the RPBOR's requirement that any person making an earnings claim provide a potential purchaser with an earnings claim representation in writing that provides substantiation for the claim.

Thus, the Commission does not believe that the RPBOR will impose a significant economic impact on a substantial number of small businesses. Nonetheless, the Commission specifically requests comment on the question whether the RPBOR imposes a significant impact upon a substantial number of small entities, and what modifications to the rule the Commission could make to minimize the burden on small entities. Moreover, the Commission requests comment on the general question whether new technology or changes in technology can be used to reduce the burdens mandated by the Act.

In some situations, the Commission has considered adopting a delayed effective date for small entities subject to a new regulation in order to provide them with additional time to come into compliance. In this case, however, in light of the RPBOR's flexible standard and modest compliance costs, the Commission believes that small entities should feasibly be able to come into compliance with the RPBOR by the proposed effective date, six months following publication of the final Rule. Nonetheless, the Commission invites comment on whether small businesses might need additional time to come into compliance and, if so, why.

In addition, the Commission has the authority to exempt any persons or classes of persons from the Rule's application pursuant to Section 18(g) of the FTC Act. The Commission therefore

requests comment on whether there are any persons or classes of persons covered by the RPBOR that it should consider exempting from the Rule's application pursuant to Section 18(g). However, the Commission notes that the RPBOR's purpose of protecting consumers against fraud could be undermined by the granting of a broad exemption to small entities.

7. Questions for Comment to Assist Regulatory Flexibility Analysis

a. Please provide information or comment on the number and type of small entities affected by the RPBOR. Include in your comment the number of small entities that will be required to comply with the RPBOR's disclosure and recordkeeping requirements.

b. Please provide comment on any or all of the provisions in the RPBOR with regard to: (a) the impact of the provision(s) (including benefits and costs to implement and comply with the RPBOR or any of its provisions), if any; and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the RPBOR on small entities in light of the above analysis. In particular, please provide the above information with regard to the disclosure and recordkeeping provisions of the RPBOR set forth in sections 437.2, 437.3, 437.4, and 437.6, and describe any ways in which the RPBOR could be modified to reduce any costs or burdens for small entities consistent with the RPBOR's purpose, and costs to implement and comply with provisions of the RPBOR, including expenditures of time and money for: any employee training; attorney, computer programmer or other professional time; preparing relevant materials (*e.g.*, disclosure documents); and recordkeeping.

c. Please describe ways in which the RPBOR could be modified to reduce any costs or burdens on small entities, including whether and how technological developments could further reduce the costs of implementing and complying with the RPBOR for small entities.

d. Please provide any information quantifying the economic costs and benefits of the RPBOR on the entities covered, including small entities.

e. Please identify any relevant federal, state, or local rules that may duplicate, overlap or conflict with the RPBOR.

Section J Request for Comments

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or

appropriate to the Commission's consideration of the RPBOR. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission will continue to accept public comment on the specific questions identified in the Notice of Proposed Rulemaking.²²⁸

Furthermore, the Commission solicits comment on the following specific questions.

In response to each of the following questions, please provide: (1) detailed comment, including data, statistics, consumer complaint information, and other evidence, regarding the issues addressed in the question; (2) comment as to whether the proposal does or does not provide an adequate solution to the problems it is intended to address; and (3) suggestions for additional changes that might better maximize consumer protections or minimize the burden on business opportunity sellers.

1. Proposed section 437.1(c) limits the scope of coverage to sellers who offer to provide location assistance, account assistance, or buy-back assistance. Do the enumerated categories of assistance that are necessary to trigger coverage of the rule adequately cover the field of business opportunity promoters who are most likely to engage in fraud? Why or why not? What alternatives, if any, should the Commission consider? What would be the costs and benefits of each alternative? The RPBOR covers all business arrangements currently covered by the interim Business Opportunity Rule, as well as certain others currently not covered, such as work-at-home offerings (e.g., envelope stuffing or craft assembly schemes), and offerings costing less than \$500. Are there other types of offerings not covered by the interim Business Opportunity Rule that inadvertently may be covered under the RPBOR? In particular, are the limitations to the RPBOR's coverage sufficient to keep the rule from covering traditional distributor relationships? Why or why not? Are there industries where there are significant numbers of people who work at home and are paid on a piece-work basis? Would firms that employ such workers become subject to the provisions of the RPBOR? Why or why not? What alternatives should the Commission consider to avoid covering arrangements that should not be covered by the RPBOR?

2. The definition of "providing locations, outlets, accounts, or customers" includes "otherwise

assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers." Does this language adequately cover all of the business opportunity arrangements that should be within the scope of the rule? Why or why not? Will the inclusion of "otherwise assisting" in the definition cause traditional product distribution arrangements, educational institutions, or how-to books to be subject to the proposed Rule? Will it result in the inclusion of multi-level marketing relationships that would otherwise not be covered? Why or why not? How could the language be refined to achieve the proper scope?

3. The one-page disclosure document set forth in Appendix A is intended to provide prospective purchasers with material information with which to make an informed investment decision. The Commission has retained an expert to evaluate the proposed form to ensure that it appropriately conveys to the consumer information that is material to the transaction. Can the overall presentation of the information in the one-page disclosure document be improved to make it more useful and understandable? Are there specific sections that can be improved by simplifying the presentation to make it easier for prospective purchasers to understand? How could the presentation be improved? What would be the costs and benefits of each alternative? Please submit quantitative or qualitative analysis to support specific recommendations.

4. Proposed section 437.3(a)(3) would require sellers to furnish certain litigation information. Specifically, the seller would disclose information about itself, as well as any affiliates and prior businesses, any of the seller's officers, directors, and sales managers, but not of sales employees. Does this provision adequately capture the types of individuals whose litigation should be disclosed? Why or why not? What alternative language, if any, should the Commission consider? What would be the costs and benefits of each alternative?

5. Proposed section 437.3(a)(6) would enable a seller to furnish prospective purchasers with a national list of prior purchasers. Is this a viable option? Why or why not? Under what circumstances should the Rule permit a seller to post a national list of purchasers on its website? What protections should be put in place to limit access to the list? What protections might be sufficient to prevent those who merely want to sell fraudulent business opportunities from accessing such a list? What other options, if any, should the Commission

consider? Would these options enable the seller to select only those prior purchasers who are successful or who otherwise would give a favorable report on the seller? What would be the costs and benefits of each alternative?

6. Proposed Sections 437.4(a)(4)(v) and 437.4(b)(3)(ii) would require business opportunity sellers who make earnings claims to disclose "the number and percentage of all persons who purchased the business opportunity prior to the ending date [of the period when the represented earnings were achieved] who achieved at least the stated level of earnings. Does this requirement create difficulties for a business opportunity seller who is attempting to inform consumers accurately of their likely experience if they purchase the business opportunity being offered? Is such a disclosure going to be useful to consumers who are considering the purchase of the business opportunity? Why or why not? Are there alternative approaches—for example, limiting the set of purchasers to be included in the percentage calculation—that would limit the difficulties? How would any such proposals affect the usefulness of the resulting information to prospective purchasers?

7. Proposed section 437.4(a)(4)(vi) would require sellers who make earnings claims to disclose "any characteristics of the purchasers who achieved at least the represented level of earnings, such as their location, that may differ materially from the characteristics of the prospective purchasers being offered the business opportunity." Does this provision adequately capture the relevant earnings information that should be disclosed? Why? What alternative language, if any, should the Commission consider? What would be the costs and benefits of each alternative?

8. Proposed section 437.7 identifies two categories of franchises that are exempt from the requirements of the RPBOR. Is the exemption overly broad or overly narrow? Why? What alternative language, if any, should the Commission consider?

List of Subjects in 16 CFR Part 437

Reporting and recordkeeping requirements, Trade practices.

Section K Text of Proposed Rule

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend 16 C.F.R. chapter I by adding part 437 to read as follows:

²²⁸ 71 FR at 19083 - 87.

PART 437—BUSINESS OPPORTUNITY RULE

Sec.

437.1 Definitions.

437.2 The obligation to furnish written documents.

437.3 Disclosure document.

437.4 Earnings claims.

437.5 Other prohibited practices.

437.6 Record retention.

437.7 Franchise exemption.

437.8 Outstanding orders; preemption.

437.9 Severability.

Appendix A to Part 437: Business

Opportunity Disclosure Document

Authority: 15 U.S.C. 41–58.**§ 437.1 Definitions.**

The following definitions shall apply throughout this part:

(a) *Action* means a criminal information, indictment, or proceeding; a civil complaint, cross claim, counterclaim, or third-party complaint in a judicial action or proceeding; arbitration; or any governmental administrative proceeding, including, but not limited to, an action to obtain or issue a cease and desist order, and an assurance of voluntary compliance.

(b) *Affiliate* means an entity controlled by, controlling, or under common control with a business opportunity seller.

(c) *Business opportunity* means:

(1) A commercial arrangement in which the seller solicits a prospective purchaser to enter into a new business; and

(2) The prospective purchaser makes a required payment; and

(3) The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will:

(i) Provide locations for the use or operation of equipment, displays, vending machines, or similar devices, on premises neither owned nor leased by the purchaser; or

(ii) Provide outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services; or

(iii) Buy back any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides, including but not limited to providing payment for such services as, for example, stuffing envelopes from the purchaser's home.

(d) *Designated person* means any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business.

(e) *Disclose or state* means to give information in writing that is clear and

conspicuous, accurate, concise, and legible.

(f) *Earnings claim* means any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits. Earnings claims include, but are not limited to:

(1) Any chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables; and

(2) Any statements from which a prospective purchaser can reasonably infer that he or she will earn a minimum level of income (e.g., “earn enough to buy a Porsche,” “earn a six-figure income,” or “earn your investment back within one year”).

(g) *Exclusive territory* means a specified geographic or other actual or implied marketing area in which the seller promises not to locate additional purchasers or offer the same or similar goods or services as the purchaser through alternative channels of distribution.

(h) *General media* means any instrumentality through which a person may communicate with the public, including, but not limited to, television, radio, print, Internet, billboard, website, and commercial bulk email.

(i) *New business* means a business in which the prospective purchaser is not currently engaged, or a new line or type of business.

(j) *Person* means an individual, group, association, limited or general partnership, corporation, or any other entity.

(k) *Prior business* means:

(1) A business from which the seller acquired, directly or indirectly, the major portion of the business' assets, or

(2) Any business previously owned or operated by the seller, in whole or in part, by any of the seller's officers, directors, sales managers, or by any other individual who occupies a position or performs a function similar to that of an officer, director, or sales manager of the seller.

(l) *Providing locations, outlets, accounts, or customers* means furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; providing a list of locator or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; offering to furnish a list of locations; or otherwise assisting the prospective purchaser in

obtaining his or her own locations, outlets, accounts, or customers.

(m) *Purchaser* means a person who buys a business opportunity.

(n) *Quarterly* means as of January 1, April 1, July 1, and October 1.

(o) *Required payment* means all consideration that the purchaser must pay to the seller or an affiliate, either by contract or by practical necessity, as a condition of obtaining or commencing operation of the business opportunity. Such payment may be made directly or indirectly through a third-party. A required payment does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

(p) *Seller* means a person who offers for sale or sells a business opportunity.

(q) *Written or in writing* means any document or information in printed form or in any form capable of being downloaded, printed, or otherwise preserved in tangible form and read. It includes: type-set, word processed, or handwritten documents; information on computer disk or CD-ROM; information sent via email; or information posted on the Internet. It does not include mere oral statements.

§ 437.2 The obligation to furnish written documents.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”) for any seller to fail to furnish a prospective purchaser with the material information required by §§ 437.3(a) and 437.4(a) of this part in writing at least seven calendar days before the earlier of the time that the prospective purchaser:

(a) Signs any contract in connection with the business opportunity sale; or

(b) Makes a payment or provides other consideration to the seller, directly or indirectly through a third party.

§ 437.3 Disclosure document.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act, for any seller to:

(a) Fail to disclose to a prospective purchaser the following material information in a single written document in the form and using the language set forth in Appendix A to this part:

(1) Identifying information. State the name, business address, and telephone number of the seller, the name of the salesperson offering the opportunity,

and the date when the disclosure document is furnished to the prospective purchaser.

(2) Earnings claims. If the seller makes an earnings claim, check the "yes" box and attach the earnings statement required by § 437.4. If not, check the "no" box.

(3) Legal actions.

(i) If any of the following persons has been the subject of any civil or criminal action for misrepresentation, fraud, securities law violations, or unfair or deceptive practices within the 10 years immediately preceding the date that the business opportunity is offered, check the "yes" box:

(A) The seller;

(B) Any affiliate or prior business of the seller; or

(C) Any of the seller's officers, directors, sales managers, or any individual who occupies a position or performs a function similar to an officer, director, or sales manager of the seller.

(ii) If the "yes" box is checked, disclose all such actions in an attachment to the disclosure document. State the full caption of each action (names of the principal parties, case number, full name of court, and filing date).

(iii) If there are no actions to disclose, check the "no" box.

(4) Cancellation or refund policy. If the seller offers a refund or the right to cancel the purchase, check the "yes" box. If so, state the terms of the refund or cancellation policy in an attachment to the disclosure document. If no refund or cancellation is offered, check the "no" box.

(5) References.

(i) State the name, city and state, and telephone number of all purchasers who purchased the business opportunity within the last three years. If more than 10 purchasers purchased the business opportunity within the last three years, the seller may limit the disclosure by stating the name, city and state, and telephone number of at least the 10 purchasers within the past three years who are located nearest to the prospective purchaser's location. Alternatively, a seller may furnish a prospective buyer with a list disclosing all purchasers nationwide within the last three years. If choosing this option, insert the words "See Attached List" without removing the list headings or the numbers 1 through 10, and attach a list of the references to the disclosure document.

(ii) Clearly and conspicuously, and in immediate conjunction with the list of references, state the following: "If you buy a business opportunity from the

seller, your contact information can be disclosed in the future to other buyers."

(6) Receipt. Attach a duplicate copy of the disclosure page to be signed and dated by the purchaser. The seller may inform the prospective purchaser how to return the signed receipt (for example, by sending to a street address, email address, or facsimile telephone number).

(b) Fail to update the disclosures required by paragraph (a) of this section at least quarterly to reflect any changes in the required information, including, but not limited to, any changes in the seller's refund or cancellation policy, or the list of references; *provided, however*, that until a seller has 10 purchasers, the list of references must be updated monthly.

§ 437.4 Earnings claims.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act, for the seller to:

(a) Make any earnings claim to a prospective purchaser, unless the seller:

(1) Has a reasonable basis for its claim at the time the claim is made;

(2) Has in its possession written materials that substantiate its claim at the time the claim is made;

(3) Makes the written substantiation available upon request to the prospective purchaser and to the Commission; and

(4) Furnishes to the prospective purchaser an earnings claim statement. The earnings claim statement shall be a single written document and shall state the following information:

(i) The title "EARNINGS CLAIM STATEMENT REQUIRED BY LAW" in capital, bold type letters;

(ii) The name of the person making the earnings claim and the date of the earnings claim;

(iii) The earnings claim;

(iv) The beginning and ending dates when the represented earnings were achieved;

(v) The number and percentage of all persons who purchased the business opportunity prior to the ending date in paragraph (a)(4)(iv) of this section who achieved at least the stated level of earnings;

(vi) Any characteristics of the purchasers who achieved at least the represented level of earnings, such as their location, that may differ materially from the characteristics of the prospective purchasers being offered the business opportunity; and

(vii) A statement that written substantiation for the earnings claim

will be made available to the prospective purchaser upon request.

(b) Make any earnings claim in the general media, unless the seller:

(1) Has a reasonable basis for its claim at the time the claim is made;

(2) Has in its possession written material that substantiates its claim at the time the claim is made;

(3) States in immediate conjunction with the claim:

(i) The beginning and ending dates when the represented earnings were achieved; and

(ii) The number and percentage of all persons who purchased the business opportunity prior to the ending date in paragraph (b)(3)(i) of this section who achieved at least the stated level of earnings.

(c) Disseminate industry financial, earnings, or performance information unless the seller has written substantiation demonstrating that the information reflects the typical or ordinary financial, earnings, or performance experience of purchasers of the business opportunity being offered for sale.

(d) Fail to notify any prospective purchaser in writing of any material changes affecting the relevance or reliability of the information contained in an earnings claim statement before the prospective purchaser signs any contract or makes a payment or provides other consideration to the seller, directly or indirectly, through a third party.

§ 437.5 Other prohibited practices.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this part and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for any seller, directly or indirectly through a third party, to:

(a) Disclaim, or require a prospective purchaser to waive reliance on, any statement made in any document or attachment that is required or permitted to be disclosed under this Rule;

(b) Make any claim or representation, orally, visually, or in writing, that is inconsistent with or contradicts the information required to be disclosed by §§ 437.3 (basic disclosure document) and 437.4 (earnings claims document) of this Rule;

(c) Include in any disclosure document or earnings claim statement any materials or information other than what is explicitly required or permitted by this Rule. For the sole purpose of enhancing the prospective purchaser's ability to maneuver through an electronic version of a disclosure document or earnings statement, the

seller may include scroll bars and internal links. All other features (e.g., multimedia tools such as audio, video, animation, or pop-up screens) are prohibited;

(d) Misrepresent the amount of sales, or gross or net income or profits a prospective purchaser may earn or that prior purchasers have earned;

(e) Misrepresent that any governmental entity, law, or regulation prohibits a seller from:

(1) furnishing earnings information to a prospective purchaser; or

(2) disclosing to prospective purchasers the identity of other purchasers of the business opportunity;

(f) Fail to make available to prospective purchasers, and to the Commission upon request, written substantiation for the seller's earnings claims;

(g) Misrepresent how or when commissions, bonuses, incentives, premiums, or other payments from the seller to the purchaser will be calculated or distributed;

(h) Misrepresent the cost, or the performance, efficacy, nature, or central characteristics of the business opportunity or the goods or services offered to a prospective purchaser;

(i) Misrepresent any material aspect of any assistance offered to a prospective purchaser;

(j) Misrepresent the likelihood that a seller, locator, or lead generator will find locations, outlets, accounts, or customers for the purchaser;

(k) Misrepresent any term or condition of the seller's refund or cancellation policies;

(l) Fail to provide a refund or cancellation when the purchaser has satisfied the terms and conditions disclosed pursuant to §437.3(a)(4);

(m) Misrepresent a business opportunity as an employment opportunity;

(n) Misrepresent the terms of any territorial exclusivity or territorial protection offered to a prospective purchaser;

(o) Assign to any purchaser a purported exclusive territory that, in fact, encompasses the same or overlapping areas already assigned to another purchaser;

(p) Misrepresent that any person, trademark or service mark holder, or governmental entity, directly or indirectly benefits from, sponsors, participates in, endorses, approves, authorizes, or is otherwise associated with the sale of the business opportunity or the goods or services sold through the business opportunity;

(q) Misrepresent that any person:

(1) Has purchased a business opportunity from the seller or has operated a business opportunity of the type offered by the seller; or

(2) Can provide an independent or reliable report about the business opportunity or the experiences of any current or former purchaser.

(r) Fail to disclose, with respect to any person identified as a purchaser or operator of a business opportunity offered by the seller:

(1) Any consideration promised or paid to such person. Consideration includes, but is not limited to, any payment, forgiveness of debt, or provision of equipment, services, or discounts to the person or to a third party on the person's behalf; or

(2) Any personal relationship or any past or present business relationship other than as the purchaser or operator of the business opportunity being offered by the seller.

§ 437.6 Record retention.

To prevent the unfair and deceptive acts or practices specified in this Rule, business opportunity sellers and their principals must prepare, retain, and make available for inspection by Commission officials copies of the following documents for a period of three years:

(a) Each materially different version of all documents required by this Rule;

(b) Each purchaser's disclosure receipt;

(c) Each executed written contract with a purchaser; and

(d) All substantiation upon which the seller relies for each earnings claim from the time each such claim is made.

§ 437.7 Franchise exemption.

The provisions of this Rule shall not apply to any business opportunity that

constitutes a "franchise," as defined in the Franchise Rule, 16 CFR Part 436, *provided however*, that the provisions of this Rule shall apply to any such franchise if it is exempted from the provisions of Part 436 because, either

(a) Under § 436.8(a)(1), the total of the required payments or commitments to make a required payment, to the franchisor or an affiliate that are made any time from before to within six months after commencing operation of the franchisee's business is less than \$500, or

(b) Under § 436.8(a)(7), there is no written document describing any material term or aspect of the relationship or arrangement.

§ 437.8 Outstanding orders; preemption.

(a) If an outstanding FTC or court order applies to a person, but imposes requirements that are inconsistent with any provision of this regulation, the person may petition the Commission to amend the order. In particular, business opportunities required by FTC or court order to follow the Franchise Rule, 16 CFR Part 436, may petition the Commission to amend the order so that the business opportunity may follow the provisions of this part.

(b) The FTC does not intend to preempt the business opportunity sales practices laws of any state or local government, except to the extent of any conflict with this part. A law is not in conflict with this Rule if it affords prospective purchasers equal or greater protection, such as registration of disclosure documents or more extensive disclosures. All such disclosures, however, must be made in a separate state disclosure document.

§ 437.9 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

BILLING CODE 6750-01-S

APPENDIX A to Part 437.

BUSINESS OPPORTUNITY DISCLOSURES
Required by Federal Trade Commission, 16 C.F.R. Part 437

Seller: [Name] _____ [Address] _____

[Phone] _____ Salesperson: _____ Date: _____

The following information can help you in deciding whether to buy a business opportunity. Note, however, that no governmental agency has verified the information. To learn more about business opportunities, call the FTC at 1-877-FTC-HELP (877-382-4357) or visit the FTC's website at ftc.gov/bizopps/. Also, check with your state's Attorney General.

Yes No (Either the "YES" or "NO" box must be checked for the following three disclosures)

EARNINGS: The seller or its representatives states or implies, or has stated or implied, a specific level of sales, income, or profit you can make or that current or former purchasers have earned. If so, the information must be set forth in an "Earnings Claims Statement" attached to this page. Read this statement carefully. You may wish to show this information to an advisor or accountant.

LEGAL ACTIONS: The seller or its key personnel involved in the sale of business opportunities have been the subject of a civil or criminal action involving misrepresentation, fraud, securities law violation, or unfair or deceptive practices within the past 10 years. **If so, the seller must attach a list of all such legal actions.**

CANCELLATION OR REFUND POLICY: The seller offers a cancellation or refund policy. **If so, the seller must attach a statement describing its policy.**

REFERENCES: The seller must provide you with contact information for at least 10 of its purchasers located nearest to you (or, if there are fewer than 10, all purchasers). You may wish to contact them to verify the seller's claims. If you buy a business opportunity from the seller, your contact information can be disclosed in the future to other buyers.

	Name	City	State	Zip	Telephone Number
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

Received by:

Date:

By direction of the Commission.

Donald S. Clark

Secretary

Attachment A

Cited NPR Commenters

Avon Products, Inc. (“Avon”)
 American Society of Travel Agents,
 Inc. (“ASTA”)
 Amsoil, Inc (“Amsoil”)
 Babener and Associates (“Babener”)
 Carico International (“Carico”)
 Chadbourne & Parke LLP,
 (“Chadbourne”)
 Chamber of Commerce of the United
 States of America (“CC USA”)
 Consumer Awareness Institute
 (“CAI”)
 The Cosmetic, Toiletry and Fragrance
 Association (“CTFA”)
 Direct Selling Association (“DSA”)
 Freelif International (“Freelif”)
 Venable, LLP (“Venable”)
 Haynes & Boone, LLP
 (“Haynesboone”) Herbalife International
 of America (“Herbalife”)

Home Interiors & Gifts Inc. (“HIG”)
 Independent Bakers Association
 (“IBA”)
 International Business Owners Ass’n
 Int’l, (“IBOAI”)
 Larkin Hoffman Daly & Lindgren Ltd.
 (“LHD&L”)
 Maclay Murray and Spens LLP
 (“MMS”)
 Mary Kay, Inc. (“Mary Kay”)
 Melaleuca, Inc. (“Melaleuca”)
 MLM Distributor Rights Ass’n (MLM
 DRA)
 Multilevel Marketing International
 Association (“MLMIA”)
 National Association of Consumer
 Agency Administrators (“NACAA”)
 National Black Chamber of Commerce
 (“NBCC”)
 National Consumers League (“NCL”)
 Newspaper Association of America
 (“NAA”)
 Pampered Chef, Ltd. (“Pampered
 Chef”)
 Pre-Paid Legal Services, Inc. (“Pre-
 Paid Legal”)
 Primerica Financial Services, Inc.,
 (“Primerica”)

Plumbing Manufacturers Institute
 (“PMI”)
 Professional Association for Network
 Marketing (“PANM”)
 Pyramid Scheme Alert (“PSA”)
 Quixtar, Inc. (“Quixtar”)
 Shaklee Corporation (“Shaklee”)
 Snell & Wilmer (“Snell”)
 Sonnenschein Nath & Rosenthal LLP
 (“Sonnenschein”)
 Southern Progress Corporation
 (“SPC”)
 Success In Action (“SIA”)
 Shure Pets (“Shure”)
 Symmetry Corporation (“Symmetry”)
 Synergy Worldwide (“Synergy”)
 The Timberland Co. (“Timberland”)
 United States Department of Justice,
 Office of Consumer Litigation (“DOJ”)
 Venable LLP (“Venable”)
 World Association of Persons with
 disAbilities, Inc. (“WAPAI”)
 Xango, LLC (“Xango”)

[FR Doc. E8-6059 Filed 3-25-08; 8:45 am]

BILLING CODE 6750-01-S



Federal Register

**Wednesday,
March 26, 2008**

Part III

Department of Housing and Urban Development

**HUD's Fiscal Year (FY) 2008 NOFA for
the HOPE VI Revitalization Grants
Program; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5198-N-01]

**HUD's Fiscal Year (FY) 2008 NOFA for
the HOPE VI Revitalization Grants
Program**

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of HUD's Fiscal Year (FY) 2008 Notice of Funding Availability for HUD's HOPE VI Revitalization Grants Program.

SUMMARY: On March 10, 2008, HUD published its Notice of Fiscal Year (FY) 2008 Opportunity to Register Early and Other Important Information for Electronic Application Submission via Grants.gov. Today's publication is governed by the information and instructions found in the Notice of HUD's Fiscal Year 2008 Notice of Funding Availability (NOFA) Policy Requirements and General Section (General Section) to the SuperNOFA that HUD published on March 19, 2008 and the March 10, 2008 Notice of FY 2008 Opportunity to Register Early and Other Important Information for Electronic Application Submission Via Grants.gov, unless otherwise noted in this HOPE VI Revitalization NOFA.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in this program NOFA. Questions regarding the General Section of March 19, 2008, and the March 10, 2008 Notice of FY 2008 Opportunity to Register Early and Other Important Information for Electronic Application Submission Via Grants.gov, should be directed to the Office of Departmental Grants Management and Oversight at (202) 708-0667 (this is not a toll-free number) or the NOFA Information Center at (800) HUD-8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: Through today's publication, HUD is making available approximately \$97.6 million in assistance through the FY2008 HOPE VI Revitalization Grants program.

The NOFA published today provides the statutory and regulatory requirements, threshold requirements, and rating factors applicable to funding being made available today (through the HOPE VI Revitalization NOFA). Applicants for the HOPE VI NOFA must

also refer to the General Section of March 19, 2008 (73 FR 14882) and the March 10, 2008 Notice of FY 2008 Opportunity to Register Early and Other Important Information for Electronic Application Submission Via Grants.gov (73 FR 12751) for important application information and requirements, including submission requirements, which have changed this year.

In FY 2008, HUD is continuing its requirement that applicants submit their applications electronically through <http://www.grants.gov>. If applicants have questions concerning the registration process, registration renewal, assigning a new Authorized Organization Representative, or have a question about a NOFA requirement, please contact HUD staff identified in this program NOFA. HUD staff cannot help you write your application, but can clarify requirements that are contained in the General Section, this Notice, and in HUD's registration materials. New applicants should note that they are required to complete a five-step registration process in order to submit their applications electronically. The General Section included in the instructions download materials on Grants.gov provides a step-by-step explanation of the registration process, as well as where to find, on HUD's Web site, materials prepared by HUD to help guide applicants through the registration and application submission process.

Applications and Instructions are posted to *Grants.gov* as soon as HUD finalizes them. HUD encourages applicants to subscribe to the Grants.gov free notification service. By doing so, applicants will receive an e-mail notification as soon as items are posted to the Web site. The address to subscribe to this service is <http://www.grants.gov/search/email.do>. By joining the notification service, if a modification is made to the NOFA, applicants will receive an e-mail notification that a change has been made.

HUD encourages applicants to carefully read the General Section and all parts of this HOPE VI Revitalization NOFA. Carefully following the directions provided can make the difference in a successful application submission.

Dated: March 19, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

Overview Information

A. Federal Agency Name. Department of Housing and Urban Development, Office of Public and Indian Housing.

B. Funding Opportunity Title. Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants Fiscal Year 2008.

C. Announcement Type. Initial announcement.

D. Funding Opportunity Number. The **Federal Register** number for this NOFA is FR-5198-N-01. The OMB approval number for this program is: 2577-0208.

E. Catalog of Federal Domestic Assistance (CFDA) Number. The CFDA number for this NOFA is 14-866, "Demolition and Revitalization of Severely Distressed Public Housing (HOPE VI)."

F. Dates.

Application Deadline Date: The application deadline date is June 20, 2008. Electronic applications must be received and validated by Grants.gov by 11:59:59 p.m. eastern time on the deadline date. See HUD's General Section of March 19, 2008 and the March 10, 2008 Notice of FY 2008 Opportunity to Register Early and Other Important Information for Electronic Application Submission Via Grants.gov, for application submission, faxing instructions, and timely receipt requirements. HUD will not accept an entire application submitted by fax.

G. Additional Overview Content Information.

1. Available Funds. This NOFA announces the availability of approximately \$97.6 million in FY 2008 funds for HOPE VI Revitalization Program grants.

2. The maximum amount of each grant award is \$20 million. It is anticipated that four or five grant awards will be made.

3. All non-troubled public housing authorities (PHAs) with severely distressed public housing are eligible to apply, subject to the requirements under Section III of this NOFA. PHAs that manage only a Housing Choice Voucher (HCV) program, tribal PHAs, and tribally designated housing entities are not eligible.

4. A match of at least 5 percent is required.

5. Application materials may be obtained from http://www.grants.gov/applicants/apply_for_grants.jsp. Any technical corrections will be published in the **Federal Register** and posted to Grants.gov. Frequently asked questions

will be posted on HUD's Web site at <http://www.hud.gov/offices/adm/grants/otherhud.cfm> and <http://www.hud.gov/offices/pih/programs/ph/hope6/>.

6. General Section Reference. Section I, "Funding Opportunity Description," of the General Section of March 19, 2008 is hereby incorporated by reference.

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description

In accordance with Section 24(a) of the United States Housing Act of 1937 (42 U.S.C. 1437v) (1937 Act), the purpose of HOPE VI Revitalization grants is to assist PHAs to:

1. Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);
2. Revitalize sites (including remaining public housing dwelling units) on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood;
3. Provide housing that will avoid or decrease the concentration of very low-income families; and
4. Build sustainable communities.

B. Authority

1. The funding authority for HOPE VI Revitalization grants under this HOPE VI NOFA is provided by the Consolidated Appropriations Act, 2008 (Pub. L. 110-161, approved December 26, 2007) under the heading "Revitalization of Severely Distressed Public Housing (HOPE VI)."

2. The program authority for the HOPE VI program is Section 24 of the 1937 Act, as amended by the Consolidated Appropriations Act, 2008 (Pub. L. 110-161, approved December 26, 2007).

C. Definitions

1. Public Housing Project

A public housing project is a group of assisted housing units that has a single Project Number assigned by the Director of Public Housing of a HUD Field Office and has, or had (in the case of previously demolished units) housing units under an Annual Contributions Contract.

2. Replacement Housing

Under this HOPE VI NOFA, a HOPE VI replacement housing unit shall be deemed to be any combination of public housing rental units, eligible

homeownership units under Section 24(d)(1)(J) of the 1937 Act, and HCV assistance that does not exceed the number of units demolished and disposed of at the targeted severely distressed public housing project.

3. Severely Distressed

a. In accordance with Section 24(j)(2) of the 1937 Act, the term "severely distressed public housing" means a public housing project (or building in a project) that:

- (1) Requires major redesign, reconstruction, or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plan of the project;
- (2) Is a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood;
- (3) (a) Is occupied predominantly by families who are very low-income families with children, have unemployed members, and are dependent on various forms of public assistance; (b) has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area; or (c) is lacking in sufficient appropriate transportation, supportive services, economic opportunity, schools, civic and religious institutions, and public services, resulting in severe social distress in the project;
- (4) Cannot be revitalized through assistance under other programs, such as the Capital Fund and Operating Fund programs for public housing under the 1937 Act, or the programs under sections 9 or 14 of the 1937 Act (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, approved October 21, 1998)), because of cost constraints and inadequacy of available amounts; and
- (5) In the case of an individual building that currently forms a portion of the public housing project targeted by the application to this NOFA:

- (a) Is sufficiently separable from the remainder of the project of which the building is part, such that the revitalization of the building is feasible; or
- (b) Was part of the targeted public housing project that has been legally vacated or demolished, but for which HUD has not yet provided replacement housing assistance (other than tenant-

based assistance). "Replacement housing assistance" is defined as funds that have been furnished by HUD to perform major rehabilitation on, or reconstruction of, the public housing units that have been legally vacated or demolished.

b. A severely distressed project that has been legally vacated or demolished (but for which HUD has not yet provided replacement housing assistance, other than tenant-based assistance) must have met the definition of physical distress not later than the day the demolition application approval letter was dated by HUD.

4. Targeted Project

The targeted project is the current public housing project that will be revitalized with funding from this NOFA. The targeted project may include more than one public housing project or be a part of a public housing project. See Section III.C.2 of this NOFA for thresholds related to eligibility of multiple public housing projects and separability of a part of a public housing project.

5. Temporary Relocation

There are no provisions for "temporary relocation" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). See Handbook 1378, Chapter 2, Section 207 for temporary relocation protections provided under the URA regulations and HUD policy. The Handbook can be obtained through HUDClips at <http://www.hud.gov/offices/adm/hudclips/index.cfm>.

II. Award Information

A. Availability of HOPE VI Funds

1. Revitalization Grants

Approximately \$97.6 million of the FY 2008 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants and will be awarded in accordance with this NOFA. There will be approximately four or five awards.

2. Requested Amount

The maximum amount you may request in your application for grant award is limited to \$20 million or the sum of the amounts in Section IV.E.3., whichever is lower. HCV assistance is in addition to this amount.

3. Housing Choice Voucher (HCV) Assistance

Housing choice voucher (HCV) assistance is available from the tenant protection voucher fund to successful applicants that receive the

Revitalization grant awards. The dollar amount of HCV assistance is in addition to the \$20 million maximum award amount and will be based upon resident relocation needs. Applicants must prepare their HCV assistance applications for the targeted project in accordance with the requirements of Notice PIH 2007-10 (and any reinstatement of or successor to that Notice) and submit it in its entirety with the HOPE VI Revitalization Application. HUD will process the HCV assistance applications for funded HOPE VI applicants. If you are not funded by this NOFA, the HCV application will not be processed. The notice can be found on the Internet at <http://www.hud.gov/offices/adm/hudclips/notices/pih/07-10PIH.doc>

4. Grant Term

The period for completion of construction shall not exceed 54 months from the date the NOFA award is executed by HUD, as described in the grant agreement. See Section IV.E.1. for statutory time limits related to the grant and expenditure of funds.

III. Eligibility Information

A. Eligible Applicants

1. Only PHAs that have severely distressed housing in their inventory and that are otherwise in conformance with the threshold requirements provided in Section III.C. of this NOFA are eligible to apply.

2. HCV Programs Only, Tribal Housing Agencies, and Others. PHAs that administer only HCV/Section 8 programs, tribal housing agencies and tribally designated housing entities, are not eligible to apply. Nonprofit organizations, for-profit organizations, and private citizens and entrepreneurs are not eligible to apply.

3. Troubled Status. If HUD has designated your PHA as troubled pursuant to section 6(j)(2) of the 1937 Act, HUD will use documents and information available to it to determine whether you qualify as an eligible applicant. In accordance with section 24(j) of the 1937 Act, the term "applicant" means:

a. Any PHA that is not designated as "troubled" pursuant to section 6(j)(2) of the 1937 Act;

b. Any PHA for which a private housing management agent has been selected, or a receiver has been appointed, pursuant to section 6(j)(3) of the 1937 Act; and

c. Any PHA that is designated as "troubled" pursuant to section 6(j)(2) of the 1937 Act and that:

(1) Is designated as troubled principally for reasons that will not

affect its capacity to carry out a revitalization program;

(2) Is making substantial progress toward eliminating the deficiencies of the agency that resulted in its troubled status;

(3) Has not been found to be in noncompliance with fair housing or other civil rights requirements; or

(4) Is otherwise determined by HUD to be capable of carrying out a revitalization program.

B. Cost Sharing or Matching

1. Match Requirements

a. Revitalization Grant Match. HUD is required by the 1937 Act (42 U.S.C. 1437v(c)(1)(A)) to include the requirement for matching funds for all HOPE VI-related grants. You are required to have in place a match in the amount of 5 percent of the requested grant amount in cash or in-kind donations. Applications that do not demonstrate the minimum 5 percent match will not be considered for funding. This is considered a threshold requirement under Section III.C.2 of this NOFA.

b. Additional Community and Supportive Services (CSS) Match. (1) In accordance with the 1937 Act (42 U.S.C. 1437v(c)(1)(B)), in addition to the 5 percent Revitalization grant match in section a above, you may be required to have in place a CSS match. Funds used for the Revitalization grant match cannot be used for the CSS match.

(2) If you are selected for funding through this NOFA, you may use up to 15 percent of your grant for CSS activities. However, if you propose to use more than 5 percent of your HOPE VI grant for CSS activities, you must have in place funds (cash or in-kind donations) from sources other than HOPE VI that match the amount between 5 and 15 percent of the grant that you will use for CSS activities. These resources do not need to be new commitments in order to be counted for match. This is considered a threshold requirement under Section III.C.2 of this NOFA.

c. No HOPE VI Funding in Match. In accordance with section 24(c) of the Act, for purposes of calculating the amount of matching funds required by Sections a and b above, you may NOT include amounts from HOPE VI program funding, including HOPE VI Revitalization, HOPE VI Demolition, HOPE VI Neighborhood Networks or HOPE VI Main Street grants. You may include funding from other public housing sources (e.g., Capital Funds, Resident Opportunities and Self-Sufficiency (ROSS) funds), other federal

sources any state or local government source, and any private contributions. You may also include the value of donated material or buildings, the value of any lease on a building, the value of the time and services contributed by volunteers, and the value of any other in-kind services or administrative costs provided.

d. For match documentation requirements, see section III.C.3.oo, Program Requirements that Apply to Match and Leverage.

C. Other

1. Eligible Revitalization Activities

HOPE VI Revitalization grants may be used for activities to carry out revitalization programs for severely distressed public housing in accordance with Section 24(d) of the 1937 Act. Revitalization activities approved by HUD must be conducted in accordance with the requirements of this NOFA. The following is a list of eligible activities.

a. Relocation

Relocation, including reasonable moving expenses, for residents displaced as a result of the revitalization of the project. See sections III.C.3. and V.A. of this NOFA for relocation requirements.

b. Demolition

Demolition of dwelling units or non-dwelling facilities, in whole or in part, although demolition is not a required element of a HOPE VI revitalization plan.

c. Disposition

Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, in accordance with section 18 of the 1937 Act and implementing regulations at 24 CFR part 970. A lease of one year or longer that is not incident to the normal operation of a project is considered a disposition that is subject to section 18 of the 1937 Act.

d. Rehabilitation and Physical Improvement

Rehabilitation and physical improvement of:

- (1) Public housing; and
- (2) Community facilities, provided that the community facilities are primarily intended to facilitate the delivery of community and supportive services for residents of the public housing project and residents of off-site replacement housing, in accordance with 24 CFR 968.112(b), (d), (e), and (g)-(o), and 24 CFR 968.130 and 968.135(b)

and (d) or successor regulations, as applicable.

e. Development

Development of:

- (1) Public housing replacement units; and
- (2) Other units (e.g., market-rate units), provided a need exists for such units and such development is performed with non-public housing funds.

f. Homeownership Activities

Assistance involving the rehabilitation and development of homeownership units. Assistance may include:

- (1) Down payment or closing cost assistance;
- (2) Hard or soft second mortgages; or
- (3) Construction or permanent financing for new construction, acquisition, or rehabilitation costs related to homeownership replacement units.

g. Acquisition

Acquisition of:

- (1) Rental units and homeownership units;
- (2) Land for the development of off-site replacement units and community facilities (provided that the community facilities are primarily intended to facilitate the delivery of community and supportive services for residents of the public housing project and residents of off-site replacement housing);
- (3) Land for economic development-related activities, provided that such acquisition is performed with non-public housing funds.

h. Management Improvements

Necessary management improvements, including transitional security activities.

i. Administration, Planning, Etc

Administration, planning, technical assistance, and other activities (including architectural and engineering work, program management, and reasonable legal fees) that are related to the implementation of the revitalization plan, as approved by HUD. See Cost Control Standards in Section III.C.3.v. of this NOFA.

j. Community and Supportive Services (CSS)

(1) The CSS component of the HOPE VI program encompasses all activities that are designed to promote upward mobility, self-sufficiency, and improved quality of life for the residents of the public housing project involved.

(2) CSS activities. CSS activities may include, but are not limited to:

(a) Educational activities that promote learning and serve as the foundation for young people from infancy through high school graduation, helping them to succeed in academia and the professional world. Such activities, which include after-school programs, mentoring, and tutoring, must be created with strong partnerships with public and private educational institutions.

(b) Adult educational activities, including remedial education, literacy training, tutoring for completion of secondary or postsecondary education, assistance in the attainment of certificates of high school equivalency, and English as a Second Language courses, as needed.

(c) Readiness and retention activities, which frequently are key to securing private sector commitments to provide jobs.

(d) Employment training activities that include results-based job training, preparation, counseling, development, placement, and follow-up assistance after job placement.

(e) Programs that provide entry-level, registered apprenticeships in construction, construction-related, maintenance, or other related activities. A registered apprenticeship program is one that has been registered with either a State Apprenticeship Agency recognized by the Department of Labor's (DOL) Office of Apprenticeship Training, Employer and Labor Services (OATELS) or, if there is no recognized state agency, by OATELS. See also DOL regulations at 29 CFR part 29.

(f) Training on topics such as parenting skills, consumer education, family budgeting, and credit management.

(g) Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed. The Family Self-Sufficiency program can also be used to promote homeownership, providing assistance with escrow accounts and counseling.

(h) Coordinating with health care providers or providing on-site space for health clinics, doctors, wellness centers, dentists, etc., that will primarily serve the public housing residents. HOPE VI funds may not be used to provide direct medical care to residents.

(i) Substance and alcohol abuse treatment and counseling.

(j) Activities that address domestic violence treatment and prevention.

(k) Child care services that provide sufficient hours of operation to facilitate parental access to education and job

opportunities, serve appropriate age groups, and stimulate children to learn.

(l) Transportation, as necessary, to enable all family members to participate in available CSS activities and to commute to their places of employment.

(m) Entrepreneurship training and mentoring, with the goal of establishing resident-owned businesses.

k. Leveraging

Leveraging other resources, including additional housing resources, supportive services, job creation, and other economic development uses on or near the project that will benefit future residents of the site.

2. Threshold Requirements

Applications must meet all threshold requirements in order to be rated and ranked, including the match requirements under Section III.B of this NOFA. If an application does not meet all threshold requirements, HUD will not consider the application as eligible for funding and will not rate and rank it. HUD will screen for technical deficiencies and administer a cure period. The subsection entitled, "Corrections to Deficient Applications," in section V.B. of the General Section is incorporated by reference and applies to this NOFA unless otherwise stated. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 7 calendar days of the date of receipt of the HUD notification. (If the deadline date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.) If an applicant does not cure all its technical deficiencies that relate to threshold requirements within the cure period, HUD will consider the threshold(s) in question to be failed, will not consider the application as eligible for funding, and will not rate and rank it. Applicants MUST review and follow documentation requirements provided in this Thresholds Requirements Section and the Program Requirements of Section III.C.3. A false statement (or certification) in an application is grounds for denial or termination of an award and grounds for possible prosecution as provided in 18 U.S.C. 1001, 1010, and 1012, and 32 U.S.C. 3729 and 3802. Required forms, certifications and assurances must be included in the HOPE VI application and will be available on the Internet at http://www.grants.gov/applicants/apply_for_grants.jsp.

a. Curable Thresholds

The following thresholds may be cured in accordance with the criteria above. Examples of curable (correctable) technical deficiencies include, but are not limited to, inconsistencies in the funding request, failure to submit the proper certifications (e.g., form HUD-2880), and failure to submit a signature and/or date of signature on a certification.

(1) Severe Distress of Targeted Project. The targeted public housing project must be severely distressed. See section I.C. of this NOFA for the definition of "severely distressed." If the targeted project is not severely distressed, your application will not be considered for funding. Applicants must use the severe distress certification form provided with this NOFA and place it in their attachments. The certification must be signed by an engineer or architect licensed by a state licensing board. The license does not need to have been issued in the same state as the severely distressed project. The engineer or architect must include his or her license number and state of registration on the certification. The engineer or architect may not be an employee of the housing authority or the city. See Section IV.B.3.c. of the General Section for information on submitting third party documents.

(2) Land Use. Your application must include a certification from the appropriate local official (not the Executive Director) documenting that all required land use approvals for developed and undeveloped land have been secured for any off-site housing and other proposed off-site uses, or that the request for such approval(s) is on the agenda for the next meeting of the appropriate authority in charge of land use. In the case of the latter, the certification must include the date of the meeting. You must include this certification in your attachments.

(3) Selection of Developer. You must assure that:

(a) You have initiated a request for quotation (RFQ) by the application deadline date for the competitive procurement of a developer for your first phase of construction, in accordance with 24 CFR 85.36 and 24 CFR 941.602(d) (as applicable). If you change developers after you are selected for funding, HUD reserves the right to rescind the grant; or

(b) You will act as your own developer for the proposed project. If you change your plan and procure an outside developer after you are selected for funding, HUD reserves the right to rescind the grant.

(c) You must demonstrate compliance with this threshold through completion and inclusion of the Assurances for HOPE VI Application document.

(4) Relocation Plan Assurance.

(a) If you have not yet relocated residents, you must assure that:

(i) A HOPE VI Relocation Plan was completed as of the application deadline date. To learn more about HOPE VI Relocation Plans, applicants may review Handbook 1378 and Notice CPD 02-08, "Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as Amended, in HOPE VI Projects" and Notice 04-02, "Revision to Notice CPD 02-08, Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as Amended, in HOPE VI Projects;" These notices can be found at <http://www.hud.gov/offices/adm/hudclips/notices/cpd/04-2c.doc> and <http://www.hud.gov/offices/adm/hudclips/notices/cpd/02-8c.doc>.

(ii) That it conforms to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) requirements; and

(iii) That it implements HOPE VI relocation goals, as described in section V.A.6. of this NOFA. This means your plan must describe how the HOPE VI Relocation Plan incorporates the HOPE VI relocation goals contained in section V.A.6.

(b) If relocation was completed (i.e., the targeted public housing site is vacant) as of the application deadline date, rather than certifying that the HOPE VI Relocation Plan has been completed, you must assure that the relocation was completed in accordance with URA and/or section 18 requirements (depending on which of these requirements applied to the demolition in question).

(c) You must demonstrate compliance with this threshold through completion and inclusion of the Assurances for HOPE VI Application document.

(5) Resident Involvement in the Revitalization Program Assurance. You must assure that you have involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of your application. If you have not included affected residents in the planning process, your application will not be considered for funding. You must follow the resident involvement requirements listed in the Program Requirements section, section III.C.3. of this NOFA. You must demonstrate compliance with this threshold through completion and

inclusion of the Assurances for HOPE VI Application document.

(6) Standard Forms and Certifications. The last part of your application will be comprised of standard certifications common to many HUD programs. For the HOPE VI application, the required standard forms and certifications are located in Section IV.B. of this NOFA.

(7) HOPE VI Revitalization Applicant Certifications. You must include in your application a certification from the Chairman of your Board of Commissioners to the requirements listed in the HOPE VI Revitalization Applicant Certifications. You must include this certification in your attachments.

(8) Capital Fund Financing Program (CFFP). This threshold applies to any PHA with an approved CFFP proposal or CFFP proposal submitted and under review by HUD before the announcement of FY 2008 HOPE VI Revitalization grant awards. As the pledges of Capital Funds are general in nature and not project-specific, this threshold applies to all CFFP proposals approved or submitted and under review by HUD for the PHA's public housing portfolio, not just the public housing site targeted by this HOPE VI application. HOPE VI Revitalization applications may not be from PHAs that have CFFPs approved or in process, unless:

(a) The PHA includes in the application an opinion from its legal counsel that the activities proposed under the HOPE VI Revitalization application are permitted under the financing documents (as approved or, if under review, as currently drafted), or to the extent required, any approvals required under the financing documents have been obtained; and

(b) The PHA certifies that, to the extent HUD determines that the Capital Fund projections in its CFFP Proposal did not accurately or completely incorporate the reduction in public housing units that would be caused by the HOPE VI activity, if it receives the HOPE VI Revitalization grant, and prior to undertaking the HOPE VI activity, it will use Capital Funds, or other eligible funds to defease, redeem, or otherwise prepay the CFFP financing. The PHA must make this certification even if the proposal has already been approved in the event HUD makes such a determination at a later time. This prepayment must be sufficient to maintain the same debt coverage ratio in the year immediately following any reduction in annual contribution contract (ACC) Units related to the HOPE VI grant (based on the then-current year's capital fund allocation,

but giving effect to the change in ACC Units in a manner acceptable to HUD) as existed prior to any reductions occurring as a result of the HOPE VI Revitalization grant. This certification may be provided in the form of a letter from the Executive Director.

(c) HUD will consult internal CFFP records to verify which applicants have pending or approved CFFP proposals.

b. Non-Curable Thresholds

The following thresholds may not be cured in accordance with the criteria referenced in III.C.2. above.

(1) Number of Applications. Each applicant may submit a maximum of one HOPE VI Revitalization application, in accordance with the criteria of this NOFA. The application must target a severely distressed public housing project, in accordance with the Contiguous, Single, and Scattered-Site Projects threshold requirement below. If HUD receives electronically multiple versions of the application, HUD will rate and rank the last version of the application received and validated by Grants.gov by the application deadline. All other applications (i.e., prior versions) will not be considered eligible. If applicants find after submitting an application that they want to amend or adjust their application and it is prior to the deadline date, applicants should be aware that they must resubmit the entire application, including all fax transmissions previously sent, to ensure that HUD gets a complete application. HUD also recommends that fax transmissions associated to resubmitted applications be sent following validation by Grants.gov using the fax transmittal cover sheet (form HUD-96011) associated to the application. Submitting the fax transmittal after validation will ensure that your faxes will be associated to the most recent application and not a previously submitted application. HUD's system matches faxes as they come into the system and if a previous application exists prior to the new application arriving, the fax will be associated to the application already in HUD's system. HUD cannot re-associate faxes once they have been attached to an application. See Section IV.B for further instruction on submission requirements, including incorporation of the General Section.

(a) HUD will not consider applications sent entirely by facsimile (See the General Section).

(b) HUD will not accept for review or evaluation any videos submitted as part of the application or appendices.

(c) HUD will not consider any application that does not meet the timely submission requirements for

electronic submission, in accordance with the criteria of the General Section.

(2) Appropriateness of Proposal. In accordance with section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal (revitalization plan) in the context of the local housing market relative to other alternatives. You must discuss other possible alternatives in the local housing market and explain why the housing envisioned in the application is more appropriate. This is a statutory requirement and an application threshold. If you do not demonstrate the appropriateness of the proposal (revitalization plan) in the context of the local housing market relative to other alternatives, your application will not be considered for funding. Applicants must demonstrate compliance with this threshold in their narrative. Examples of alternative proposals may include:

(a) Rebuilding or rehabilitating an existing project or units at an off-site location that is in an isolated, non-residential, or otherwise inappropriate area;

(b) Proposing a range of incomes, housing types (rental, homeownership, market-rate, public housing, townhouse, detached house, etc.), or costs that cannot be supported by a market analysis; or

(c) Proposing to use the land in a manner that is contrary to the goals of your PHA.

(3) Contiguous, Single, and Scattered-Site Projects. Except as provided in sections (a) and (b) below, each application must target one severely distressed public housing project. The public housing project(s) may already be vacated and/or demolished as of the application deadline date. You must provide a city map at a scale sufficient to illustrate the current targeted site(s), whether contiguous, single, or scattered-site projects. In addition to the information below, see the instructions for the city map in Section IV.B.

(a) Contiguous Projects. Each application may request funds for more than one project if those projects are immediately (i) adjacent to one another or (ii) within a quarter-mile of each other. If you include more than one project in your application, you must provide a map that clearly indicates that the projects are either adjacent or within a quarter-mile of each other. If HUD determines that they are not, your application will not be considered for funding.

(b) Scattered Site Projects. Your application may request funds to revitalize a scattered site public housing project. The sites targeted in an

application proposing to revitalize scattered sites (regardless of whether the scattered sites are under multiple project numbers) must fall within an area with a one-mile radius. You may identify a larger site if you can show that all of the targeted scattered site units are located within the hard edges (e.g., major highways, railroad tracks, lakeshore, etc.) of a neighborhood. If you propose to revitalize a project that extends beyond a one-mile radius or is otherwise beyond the hard edges of a neighborhood, your application will not be considered for funding. If you propose to revitalize a scattered site public housing project, you must provide a map that clearly indicates that the projects fall within an area with a one-mile radius or, if larger, are located within the hard edges (e.g., major highways, railroad tracks, lakeshore, etc.) of a neighborhood.

(4) Sites Previously Funded. (a) You may submit a Revitalization application that targets part of a project that is being, or has been, revitalized or replaced under a HOPE VI Revitalization grant awarded in previous years. You may not apply for new HOPE VI Revitalization funds for units in that project that were funded by the existing HOPE VI Revitalization grant, even if those funds are inadequate to pay the costs to revitalize or replace all of the targeted units. For example, if a project has 700 units and you were awarded a HOPE VI Revitalization grant or other HUD public housing funds to address 300 of those units, you may submit an FY 2008 HOPE VI Revitalization application to revitalize the remaining 400 units. You may not apply for funds to supplement work on the original 300 units. If you request funds to revitalize/replace the units not funded by the previous HOPE VI Revitalization grant, you must provide a listing of which units were funded by the previous grant and which units are being proposed for funding under the current grant application. You must discuss compliance with this threshold in your narrative. If you need to provide a listing of units as described above, this may be done in the attachments section (see Section IV.B). If you request funds to revitalize units or buildings that have been funded by an existing HOPE VI Revitalization grant, your application will not be considered for funding.

(b) You may not request HOPE VI Revitalization grant funds for units currently under construction or already completed as of the application deadline, in accordance with the section IV(E), Funding Restrictions. You must demonstrate compliance with this threshold in your narrative.

(5) Separability. In accordance with section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only a portion of a project for revitalization, in your narrative you must: (1) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separable from the remainder of the project, of which the building is a part, to make use of the building feasible for revitalization. Separations may include a road, berm, catch basin, or other recognized neighborhood distinction; and (2) Demonstrate that the site plan and building designs of the revitalized portion will provide defensible space for the occupants of the revitalized building(s) and that the properties that remain will not have a negative influence on the revitalized buildings(s), either physically or socially. You must demonstrate compliance with this threshold in your narrative. If you do not propose to target only a portion of a project for revitalization, you may indicate, "n/a," for not applicable, in your narrative.

(6) Desegregation Orders. You must be in full compliance with any desegregation or other court order, and with any voluntary compliance agreements related to Fair Housing (e.g., Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973) that affects your public housing program and that is in effect on the date of application submission. If you are not in full compliance, your application will be ineligible for funding. HUD will evaluate your compliance with this threshold.

(7) Dun and Bradstreet Data Universal Numbering System (DUNS) Number Requirement. This threshold is hereby incorporated from the General Section (Section III.C.2.b.). All applicants seeking funding directly from HUD must obtain a DUNS number and include the number in its SF 424 Application for Federal Assistance submission. 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 award. Applicants should read the complete instructions in the General Section for completing the Grants.gov registration process. See the General Section for additional information regarding this requirement.

(8) Compliance with Fair Housing and Civil Rights Laws. This threshold is hereby incorporated from the General Section (Section III.C.2.c.).

(9) Delinquent Federal Debts. This threshold is hereby incorporated from the General Section (Section III.C.2.e). Applicants that at the time of award

have federal debt or are in default of an agreement with the Internal Revenue Service (IRS) will not be funded. Applicants selected for funding have an obligation to report to HUD changes in status of a current IRS agreement covering federal debt.

(10) Debarment and Suspension. This threshold is hereby incorporated from the General Section (Section III.C.2.j).

(11) Default. Existing HOPE VI Revitalization Grantees that are in default of the HOPE VI Revitalization grant agreement as of the application deadline date are not eligible for funding under this NOFA. A grantee is in default if it has received a letter from HUD indicating its default status and has not resolved the issues to HUD's satisfaction.

(12) Site Control. If you propose to develop off-site (off-site is any land other than the original public housing project site targeted by the application; see "Targeted Project" under Definitions) housing in any phase of your proposed revitalization plan (regardless of financing type), you must provide evidence in your application that you as the PHA, your PHA's instrumentality, or your developer (including when any of these three entities are part of a partnership that will own the property(ies)), have site control of every property. For the developer to count, the developer must be under a contract, or some equivalent form of predevelopment agreement, with you that dedicates the off-site property(ies) for the uses proposed in your revitalization plan. If you propose to develop off-site housing and you do not provide acceptable evidence of site control, your entire application will be disqualified from further consideration for funding.

(a) Site control documentation may only be contingent upon:

- (i) The receipt of the HOPE VI grant;
- (ii) Satisfactory compliance with the environmental review requirements of this NOFA;
- (iii) The site and neighborhood standards in section III.C.3. of this NOFA; and
- (iv) Standard underwriting procedures.

(b) If you demonstrate site control through an option to purchase, the option must extend for at least 180 days after the application deadline date.

(c) Evidence may include, but is not limited to, an option to purchase the property, a sales agreement, a land swap, a deed, or a ground lease. Evidence, however, may NOT include a letter from the mayor or other official, letters of support from members of the relevant municipal entities, or a

resolution evidencing the PHA's intent to exercise its power of eminent domain.

(d) If one or more of your off-site parcels are a public housing property, you still must provide evidence of site control for those properties.

(e) You must include documented evidence of site control in your attachments.

3. Program Requirements

a. Demolition

(1) You may not carry out nor permit others to carry out the demolition of the targeted project or any portion of the project until HUD approves, in writing, one of the following ((a)-(c)), and until HUD has also: (i) Approved a Request for Release of Funds submitted in accordance with 24 CFR part 58, or (ii) if HUD performs an environmental review under 24 CFR part 50, has approved the property for demolition, in writing, following its environmental review:

(a) Information regarding demolition in your HOPE VI Revitalization Application, along with Supplemental Submissions requested by HUD after the award of the grant. Section 24(g) of the 1937 Act provides that severely distressed public housing that is demolished pursuant to a revitalization plan is not required to be approved through a demolition application under section 18 of the 1937 Act or regulations at 24 CFR part 970. If you do not receive a HOPE VI Revitalization grant, the information in your application will not be used to process a request for demolition;

(b) A demolition application under section 18 of the 1937 Act. While a section 18 approval is not required for HOPE VI related demolition, you will not have to wait for demolition approval through your supplemental submissions, as described in section (a) above; or

(c) A section 202 Mandatory Conversion Plan, in compliance with regulations at 24 CFR part 971 and other applicable HUD requirements, if the project is subject to Mandatory Conversion (section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, approved April 26, 1996). A Mandatory Conversion Plan concerns the removal of a public housing project from a PHA's inventory.

b. Development

(1) For any standard (non-mixed finance) public housing development activity (whether on-site reconstruction or off-site development), you must

obtain HUD approval of a standard development proposal submitted under 24 CFR part 941 (or successor part).

(2) For mixed-finance housing development, you must obtain HUD approval of a mixed-finance proposal, submitted under 24 CFR part 941, subpart F (or successor part and subpart).

(3) For new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the project and residents of off-site replacement housing, you must comply with 24 CFR part 941 (or successor part). Information required for this activity must be included in either a standard or mixed-finance development proposal, as applicable.

c. Disposition

(1) Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, may be done in accordance with section 18 of the 1937 Act and implementing regulations at 24 CFR part 970.

(2) The Grantee will comply with the provisions of section 18 of the 1937 Act, 24 CFR part 970, as may be modified or amended from time to time, and the provisions of its approved disposition application (the approved "Disposition Application"), unless otherwise modified in writing by HUD. The Grantee will also comply with procedures for processing dispositions associated with mixed-finance projects as set forth by HUD.

(3) A lease of one year or more that is not incident to the normal operation of a development is considered to be a disposition that is subject to section 18 of the 1937 Act.

d. Homeownership

(1) For homeownership replacement units developed under a revitalization plan, you must obtain HUD approval of a homeownership proposal. Your homeownership proposal must conform to either:

(a) Section 24(d)(1)(f) of the 1937 Act; or

(b) Section 32 of the 1937 Act (see 24 CFR part 906). Additional information on this option may be found at www.hud.gov/offices/pih/centers/sac/homeownership.

(2) The homeownership proposal must be consistent with the Section 8 Area Median Income (AMI) limitations (80 percent of AMI) and any other applicable provisions under the 1937 Act. (HUD publishes AMI tables for each family size in each locality annually. The income limit tables can

be found at <http://www.huduser.org/datasets/il/il06/index.html>.)

e. Acquisition

(1) Acquisition Proposal. Before you undertake any acquisition activities with HOPE VI or other public housing funds, you must obtain HUD approval of an acquisition proposal that meets the requirements of 24 CFR 941.303.

(2) Rental Units. For acquisition of rental units in existing or new apartment buildings, single family subdivisions, etc., with or without rehabilitation, for use as public housing replacement units, you must obtain HUD approval of a Development Proposal in accordance with 24 CFR 941.304 (conventional development) or 24 CFR 941.606 (mixed-finance development).

(3) Land for Off-Site Replacement Units. For acquisition of land for public housing or homeownership development, you must comply with 24 CFR part 941 or successor part.

(4) Land for Economic Development-Related Activities.

(a) Acquisition of land for this purpose is eligible only if the economic development-related activities specifically promote the economic self-sufficiency of residents.

(b) Limited infrastructure and site improvements associated with developing retail, commercial, or office facilities, such as rough grading and bringing utilities to (but not on) the site, are eligible activities with prior HUD approval.

f. Access to Services

For both on-site and any off-site units, your overall Revitalization plan must result in increased access to municipal services, jobs, mentoring opportunities, transportation, and educational facilities; i.e., the physical plan and self-sufficiency strategy must be well-integrated and strong linkages must be established with the appropriate federal, state, and local agencies, nonprofit organizations, and the private sector to achieve such access.

g. Building Standards

(1) Building Codes. All activities that include construction, rehabilitation, lead-based paint removal, and related activities must meet or exceed local building codes. You are encouraged to visit HUD's Web site on Accessibility Analysis of Model Building Codes at <http://www.hud.gov/offices/fheo/disabilities/modelcodes/>. You are encouraged to read the "Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code," which

can be accessed from the Web page above, along with other valuable information on model codes and fair housing accessibility guidelines.

(2) Deconstruction. HUD encourages you to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or "deconstruction" of public housing units, recycling of demolition debris, and reusing of salvage materials in new construction. "A Guide to Deconstruction: An Overview of Destruction with a Focus on Community Development Opportunities" can be found at <http://www.huduser.org/publications/destech/decon.html>.

(3) Partnership for Advancing Technology in Housing (PATH). HUD encourages you to use PATH technologies in the construction and delivery of replacement housing. PATH is a voluntary initiative that seeks to accelerate the creation and widespread use of advanced technologies to radically improve the quality, durability, environmental performance, energy efficiency, and affordability of our nation's housing.

(a) PATH's goal is to achieve dramatic improvement in the quality of U.S. housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance, and financial industries, and representatives from federal agencies dealing with housing issues to work together to spur housing design and construction innovations. PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction.

(b) Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by:

- (i) Reducing costs;
- (ii) Improving durability;
- (iii) Increasing energy efficiency;
- (iv) Improving disaster resistance; and
- (v) Reducing environmental impact.

(c) More information, the list of technologies, the latest PATH Newsletter, results from field demonstrations, and PATH projects can be found at <http://www.pathnet.org>.

(4) Energy Efficiency.

(a) New construction or rehabilitation must comply with the International Energy Conservation Code (IECC) 2006, or in the case of multifamily high-rises, ASHRAE Standard 90.1-2004, or applicable successor codes.

(b) HUD encourages you to set higher standards, where cost effective, for energy and water efficiency in HOPE VI new construction, which can achieve

utility savings of 30 to 50 percent with minimal extra cost.

(c) You are encouraged to negotiate with your local utility company to obtain a lower rate. Utility rates and tax laws vary widely throughout the country. In some areas, PHAs are exempt or partially exempt from utility rate taxes. Some PHAs have paid unnecessarily high utility rates because they were billed at an incorrect rate classification.

(d) Local utility companies may be able to provide grant funds to assist in energy efficiency activities. States may also have programs that will assist in energy efficient building techniques.

(e) You must use new technologies that will conserve energy and decrease operating costs, where cost effective. Examples of such technologies include:

- (i) Geothermal heating and cooling;
- (ii) Placement of buildings and size of eaves that take advantage of the directions of the sun throughout the year;
- (iii) Photovoltaics (technologies that convert light into electrical power);
- (iv) Extra insulation;
- (v) Smart windows; and
- (vi) Energy Star appliances.

(5) Universal Design. HUD encourages you to incorporate the principles of universal design in the construction or rehabilitation of housing, retail establishments, and community facilities, or when communicating with community residents at public meetings or events. Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. A universal design benefits people of all ages and abilities. Examples include designing wider doorways, installing levers instead of doorknobs, and putting bathtub/shower grab bars in all units. Computers and telephones can also be set up in ways that enable as many residents as possible to use them. The Department has a publication that contains a number of ideas about how the principles of universal design can benefit persons with disabilities. To order a copy of *Strategies for Providing Accessibility and Visitability for HOPE VI and Mixed Finance Homeownership*, go to the publications and resource page of the HOPE VI Web site at <http://www.huduser.org/publications/pubasst/strategies.html>.

(6) Energy Star. HUD has adopted a wide-ranging Energy Action Plan for

improving energy efficiency in all program areas, which can be found at <http://www.hud.gov/energy/energyactionplan.pdf>. As a first step in implementing the energy plan, HUD, the Environmental Protection Agency, and the Department of Energy have signed a joint partnership to promote energy efficiency in HUD's affordable housing efforts and programs. The purposes of the Energy Star partnership are to promote energy efficiency in affordable housing stock and to help protect the environment. Applicants constructing, rehabilitating, or maintaining housing or community facilities are encouraged to promote and adopt energy efficiency in design and operations. They are urged especially to purchase and use Energy Star-labeled products. Applicants providing housing assistance or counseling services are encouraged to promote and adopt Energy Star building by homebuyers and renters. Program activities can include developing Energy Star promotional and information materials, outreach to low- and moderate-income renters and buyers on the benefits and savings when using Energy Star products and appliances, and promoting the designation of community buildings and homes as Energy Star-compliant. For further information about Energy Star, see <http://www.energystar.gov> or call 888-STAR-YES (888-782-7937), or, for the hearing-impaired, call 888-588-9920 TTY. See also the energy efficiency requirements in section III.C.3. above. See section V.A.9.g. of this NOFA for the Energy Star sub-rating factor.

(7) Lead-Based Paint. You must comply with lead-based paint evaluation and reduction requirements as provided for under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You also must comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for lead-based paint evaluation and reduction activities. The National Lead Information Hotline is (800) 424-5323.

h. Federal Labor Standards

Federal labor standards are applicable to HOPE VI grants. These labor standards involve the payment of not less than prevailing wage rates, and may include overtime requirements (premium pay for hours worked over 40 in a workweek), and recordkeeping and reporting requirements.

(1) Davis-Bacon wage requirements apply to the development of any public housing rental units or homeownership

units developed with HOPE VI grant funds. The PHA must obtain the appropriate Davis-Bacon wage decision, which sets forth the minimum wage rates that may be paid to construction laborers and mechanics. This wage decision and provisions requiring compliance with federal labor standards must be included in any bid specifications and construction contracts. Development work undertaken directly by the PHA, with its own employees, is also subject to Davis-Bacon wage requirements.

(2) HUD-determined wage rates are applicable to all maintenance laborers and mechanics engaged in the operation of revitalized housing.

(3) Exclusions. Under Section 12(b) of the 1937 Act, prevailing wage requirements do not apply to individuals who:

- a. Perform services for which they volunteered;
- b. Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and
- c. Are not otherwise employed in the work involved (24 CFR part 70).

(4) If other federal programs are used in connection with HOPE VI activities, federal labor standards requirements apply to the extent required by the other federal programs on portion of the project that are not subject to Section 12 of the 1937 Act.

i. Operation and Management Principles and Policies, and Management Agreement

HOPE VI Revitalization grantees will be required to develop Management Agreements that describe their operation and management principles and policies for their public housing units. You and your procured property manager, if applicable, must comply (to the extent required) with the provisions of 24 CFR part 966 in planning for the implementation of the operation and management principles and policies described below.

(a) Rewarding work and promoting family stability by promoting positive incentives such as income disregards and ceiling rents;

(b) Instituting a system of local preferences adopted in response to local housing needs and priorities, e.g., preferences for victims of domestic violence, residency preferences, working families, and disaster victims. Note that local preferences for public housing must comply with Fair Housing requirements at 24 CFR 960.206;

(c) Encouraging self-sufficiency by including lease requirements that promote involvement in the resident

association, performance of community service, participation in self-sufficiency activities, and transitioning from public housing;

(d) Implementing site-based waiting lists that follow project-based management principles for the redeveloped public housing. Note that site-based waiting lists for public housing must comply with Fair Housing requirements at 24 CFR 903.7(b)(2);

(e) Instituting strict applicant screening requirements such as credit checks, references, home visits, and criminal records checks;

(f) Strictly enforcing lease and eviction provisions;

(g) Improving the safety and security of residents through the implementation of defensible space principles and the installation of physical security systems such as surveillance equipment, control engineering systems, etc.;

(h) Enhancing ongoing efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with federal, state, and local crime prevention programs and entities.

j. Non-Fungibility for Moving To Work (MTW) PHAs

Funds awarded under this NOFA are not fungible under MTW agreements and must be accounted for separately, in accordance with the HOPE VI Revitalization grant Agreement, the requirements in OMB Circulars A-87, "Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments"; A-133, "Audits of States, Local Governments, and Non-Profit Organizations;" the regulations 24 CFR part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Government" and generally accepted accounting principles (GAAP).

k. Resident and Community Involvement

(1) General. You are required to involve the affected public housing residents, state and local governments, private service providers, financing agencies, and developers in the planning process, proposed implementation, and management of your revitalization plan. This involvement must be continuous from the beginning of the planning process through the implementation and management of the grant, if awarded.

(2) Resident Training Session. You must conduct at least one training session for residents of the severely distressed project on the HOPE VI

development process. HUD does not prescribe the content of this meeting.

(3) Public Meetings.

(a) You must conduct at least three public meetings with residents and the broader community, in order to involve them in a meaningful way in the process of developing the revitalization plan and preparing the application. One of these meetings must have taken place at the beginning of the planning process.

(b) These three public meetings must take place on different days from each other and from the resident training session.

(c) During these three meetings, you must address the issues listed below (i.e., all issues need not be addressed at each meeting):

(i) The HOPE VI planning and implementation process;

(ii) The proposed physical plan, including site and unit design, and whether the unit design is in compliance with Fair Housing Act and Uniform Federal Accessibility Standards (UFAS) standards;

(iii) The extent of proposed demolition;

(iv) Planned community and supportive service activities;

(v) Other proposed revitalization activities;

(vi) Relocation issues, including relocation planning, mobility counseling, and maintaining the HOPE VI community planning process during the demolition and reconstruction phases, where temporary relocation, i.e., relocation for a reasonable period (less than one year), is involved;

(vii) Reoccupancy plans and policies, including site-based waiting lists; and

(viii) Economic Opportunities for Low- and Very Low-Income Persons, including efforts to direct all employment, training, and contracting opportunities created as a result of project activities to low- and very low-income persons and the business concerns that employ these persons.

(4) Accessibility. All training sessions and meetings must be held in facilities that are accessible to persons with disabilities; provide services such as day care, transportation, and sign language interpreters, as needed; and, as practical and applicable, be conducted in English and the language(s) most appropriate for the community.

(5) Allowable Time Period for Training and Meetings.

(a) At least one public meeting, which included representation from both the affected public housing residents and the community, must have been held at the beginning of the revitalization planning period;

(b) At least one training session must have been held after the publication

date of this NOFA in the **Federal Register**; and

(c) A minimum of two more public meetings must have been held after the publication date of this NOFA in the **Federal Register**.

(d) The above minimum number of training sessions and meetings is required to meet the Resident Involvement threshold in section III.C.2. of this NOFA. Additional meetings and training sessions will be counted in the rating factors toward demonstration of continual inclusion of the residents and community.

l. CSS Program Requirements

(1) Term Period. CSS programs and services must last for the life of the grant and must be carefully planned so that they will be sustainable after the HOPE VI grant period ends.

(2) Allowed Funding Mechanisms.

(a) Maximum CSS grant amount.

Consistent with sections 24(d)(1)(L) and 24(j)(3) of the 1937 Act, you may use up to 15 percent of the total HOPE VI grant to pay the costs of CSS activities. See section III.B.1. of this NOFA for CSS grant matching requirements. You may spend additional sums on CSS activities using donations; other HUD funds made available for that purpose; and other federal, state, local, PHA, or private-sector donations (leverage).

(b) CSS Endowment Trust. Consistent with section 24(d)(2) of the 1937 Act, you may deposit up to 15 percent of your HOPE VI grant (the maximum amount of the award allowable for CSS activities) into an endowment trust to provide CSS activities. In order to establish an endowment trust, you must first execute with HUD a HOPE VI Endowment Trust Addendum to the grant agreement. When reviewing your request to set up an endowment trust, HUD will take into consideration your ability to pay for current CSS activities with HOPE VI or other funds and the projected long-term sustainability of the endowment trust to carry out those activities.

(3) CSS Team and Partners.

(a) The term "CSS Team" refers to PHA staff members and any consultants who will have the responsibility to design, implement, and manage your CSS program.

(b) The term "CSS Partners" refers to the agencies and organizations that you will work with to provide supportive services for residents. A partner could be a local service organization such as a Boys or Girls Club that donates its building and staff to the program, or an agency such as the local Temporary Assistance for Needy Families (TANF) agency that works with you to ensure

that their services are coordinated and comprehensive.

(c) Partner Agreements. There are several relationships that you may have with your partners including subgrant agreements, contracts, memoranda of understanding (MOUs), memoranda of agreement (MOAs), and/or informal relationships.

(4) Tracking and Case Management. If selected, the grantee is responsible for tracking and providing CSS programs and services to residents currently living on the targeted public housing site and residents already relocated from the site. It is imperative that case management services begin immediately upon award so that residents who will be relocated have time to participate in and benefit from CSS activities before leaving the site, and that residents who have already been relocated are able to participate in and benefit from CSS activities.

(5) CSS Strategy and Objectives Requirements.

(a) Transition to Housing Self-Sufficiency. One of HUD's major priorities is to assist public housing residents in their efforts to become financially self-sufficient and less dependent on direct government housing assistance. Your CSS program must include a well-defined, measurable endeavor that will enable public housing residents to transition to other affordable housing programs and to regular market housing. Family Self-Sufficiency (FSS) and CSS activities that are designed to increase education and income levels are considered a part of this endeavor, as is the establishment of reasonable limits on the length of time any household that is not headed by an elderly or disabled person can reside in a public housing unit within a HOPE VI Revitalization Development.

(b) Neighborhood Networks. All FY2008 Revitalization grantees will be required to establish Neighborhood Networks Centers (NNC) and to promote the inclusion of infrastructure that permits unit-based access to broadband Internet connectivity in all new and replacement public housing units. This program provides residents with on-site access to computer and training resources that create knowledge and experience with computers and the Internet as tools to increase access to CSS, job training, and the job market. Grantees may use HOPE VI funds to establish NNCs and to provide unit-based Internet connectivity. More information on the requirements of the NNC program is available on the Neighborhood Networks Web site at <http://www.hud.gov/nnw/nnwindex.html>. There will not be a

separate FY2008-funded NOFA for HOPE VI Neighborhood Networks programs.

(c) Quantifiable Goals. The objectives of your CSS program must be results-oriented, with quantifiable goals and outcomes that can be used to measure progress and make changes in activities as necessary.

(d) Appropriate Scale and Type.

(i) CSS activities must be of an appropriate scale, type, and variety to meet the needs of all residents (including adults, seniors, youth ages 16 to 21, and children) of the severely distressed project, including residents remaining on-site, residents who will relocate permanently to other PHA units or HCV-assisted housing, residents who will relocate temporarily during the construction phase, and new residents of the revitalized units.

(ii) Non-public housing residents may also participate in CSS activities, as long as the primary participants in the activities are residents as described in section (i) above.

(e) Coordination.

(i) CSS activities must be consistent with state and local welfare reform requirements and goals.

(ii) Your CSS activities must be coordinated with the efforts of other service providers in your locality, including nonprofit organizations, educational institutions, and state and local programs.

(iii) CSS activities must be well-integrated with the physical development process, both in terms of timing and the provision of facilities to house on-site service and educational activities.

(f) Your CSS program must provide appropriate community and supportive services to residents prior to any relocation.

m. CSS Partnerships and Resources

The following are examples of the kinds of organizations and agencies (local, state, and federal) that can provide you with resources necessary to carry out and sustain your CSS activities.

(1) Local boards of education, public libraries, local community colleges, institutions of higher learning, nonprofit or for-profit educational institutions, and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of young people in the revitalized development, from birth through higher education.

(2) Temporary Assistance for Needy Families (TANF) agencies/welfare departments for TANF and non-TANF in-kind services, and non-TANF cash

donations, e.g., donation of TANF agency staff time.

(3) Job development organizations that link private sector or nonprofit employers with low-income prospective employees.

(4) Workforce development agencies.

(5) Organizations that provide residents with job readiness and retention training and support.

(6) Economic development agencies such as the Small Business Administration, which provide entrepreneurial training and small business development centers.

(7) National corporations, local businesses, and other large institutions such as hospitals that can commit to provide entry-level jobs. Employers may agree to train residents or commit to hire residents after they complete jobs preparedness or training programs that are provided by you, other partners, or the employer itself.

(8) Programs that integrate employment training, education, and counseling, and where creative partnerships with local boards of education, state charter schools, TANF agencies, foundations, and private funding sources have been or could be established.

(9) Sources of capital such as foundations, banks, credit unions, and charitable, fraternal, and business organizations.

(10) Nonprofit organizations.

(11) Civil rights and fair housing organizations.

(12) Local area agencies on aging.

(13) Local agencies and organizations serving persons with disabilities.

(14) Grassroots faith-based and other community-based organizations. HUD encourages you to partner or subgrant with nonprofit organizations, including grassroots faith-based and other community-based organizations, to provide CSS activities. See HUD's Center for Faith-Based and Community Initiatives Web site at <http://www.hud.gov/offices/fbci/index.cfm>.

(15) Federal agencies and their community and supportive service-related programs, including youth-related programs. For example, many federal agencies have youth-related programs such as the Department of Justice's Weed and Seed program; the Department of Agriculture's 4-H program; the Department of Labor's Youthbuild program; and programs within the Department of Health and Human Services.

n. Fair Housing and Equal Opportunity Requirements

(1) Site and Neighborhood Standards for Replacement Housing. You must

comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and implementing regulations thereunder (including 24 CFR 1.4(b)(3) and 24 CFR 941.202). In determining the location of any replacement housing, you must comply with either the site and neighborhood standards regulations at 24 CFR 941.202 (b)–(d) or with the standards outlined in this NOFA. Because the objective of the HOPE VI program is to alleviate distressed conditions at the development and in the surrounding neighborhood, replacement housing under HOPE VI that is located on the site of the existing development or in its surrounding neighborhood will not require independent approval by HUD under Site and Neighborhood Standards. The term “surrounding neighborhood” means the neighborhood within a 3-mile radius of the site of the existing development.

(a) HOPE VI Goals Related to Site and Neighborhood Standards. You are expected to ensure that your revitalization plan will expand assisted housing opportunities outside low-income areas and areas of minority concentration and will accomplish substantial revitalization in the project and its surrounding neighborhood. You are also expected to ensure that eligible households of all races and ethnic groups will have equal and meaningful access to the housing.

(b) Objectives in Selecting HUD-Assisted Sites. The fundamental goal of HUD’s fair housing policy is to make full and free housing choice a reality. Housing choice requires that all households may choose the type of neighborhood where they wish to reside; that minority neighborhoods are no longer deprived of essential public and private resources; and that stable, racially mixed neighborhoods are available as a meaningful choice for all. To make full and free housing choice a reality, sites for HUD-assisted housing investment should be selected so as to advance two complementary goals:

(i) Expand assisted housing opportunities in non-minority neighborhoods, opening up choices throughout the metropolitan area for all assisted households; and

(ii) Reinvest in minority neighborhoods, improving the quality and affordability of housing there to represent a real choice for assisted households.

(c) Nondiscrimination and Equal Opportunity Requirements. In determining the location of any replacement housing, you must comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504

of the Rehabilitation Act of 1973, and implementing regulations.

(d) Grantee Election of Requirements. You may, at your election, separately with regard to each site you propose, comply with the development regulations regarding Site and Neighborhood Standards (24 CFR 941.202 (b)–(d)), or with the Site and Neighborhood Standards contained in this section.

(e) Replacement housing located on-site or in the surrounding neighborhood. Replacement housing under HOPE VI that is located on the site of the existing project or in its surrounding neighborhood will not require independent approval under Site and Neighborhood Standards, since HUD will consider the scope and impact of the proposed revitalization to alleviate severely distressed conditions at the public housing project and its surrounding neighborhood, in assessing the application to be funded under this NOFA.

(f) Off-Site Replacement Housing Located Outside the Surrounding Neighborhood. Unless you demonstrate that there are already significant opportunities in the metropolitan area for assisted households to choose non-minority neighborhoods (or that these opportunities are under development), HOPE VI replacement housing not covered by section (e) above may not be located in an area of minority concentration (as defined in paragraph (g) below) without the prior approval of HUD. Such approval may be granted if you demonstrate to the satisfaction of HUD that:

(i) You have made determined and good faith efforts, and found it impossible with the resources available, to acquire an appropriate site(s) in an area not of minority concentration; or

(ii) The replacement housing, taking into consideration both the CSS activities or other revitalizing activities included in the revitalization plan, and any other revitalization activities in operation or firmly planned, will contribute to the stabilization or improvement of the neighborhood in which it is located, by addressing any serious deficiencies in services, safety, economic opportunity, educational opportunity, and housing stock.

(g) Area of Minority Concentration. The term “area of minority concentration” is any neighborhood in which:

(i) The neighborhood’s percentage of persons in a particular racial or ethnic minority is at least 20 percentage points higher than the percentage of that particular racial or ethnic group in the housing market area; i.e., the

Metropolitan Statistical Area (MSA) in which the proposed housing is to be located;

(ii) The neighborhood’s total percentage of minority persons is at least 20 percentage points higher than the total percentage of all minorities for the MSA as a whole; or

(iii) In the case of a metropolitan area, the neighborhood’s total percentage of minority persons exceeds 50 percent of its population.

(2) Housing and Services for Persons with Disabilities.

(a) Accessibility Requirements. HOPE VI developments are subject to the accessibility requirements contained in several federal laws. All applicable laws must be read together and followed. PIH Notice 2006–13, available at <http://www.hud.gov/offices/adm/hudclips/notices/pih/06–13PIH.doc>, and subsequent updates or successor notices, provide an overview of all pertinent laws and implementing regulations pertaining to HOPE VI. All HOPE VI multifamily housing projects, whether they involve new construction or rehabilitation, are subject to the section 504 accessibility requirements described in 24 CFR part 8. See, in particular, 24 CFR 8.20–8.24. In addition, under the Fair Housing Act, all new construction of covered multifamily buildings must contain certain features of accessible and adaptable design. Units covered are all those in elevator buildings with four or more units and all ground floor units in buildings without elevators. The relevant accessibility requirements are provided on HUD’s Fair Housing and Equal Opportunity (FHEO) Web site at <http://www.hud.gov/groups/fairhousing.cfm>.

(b) Fair housing and other civil rights authorities include:

(i) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100.

(ii) The prohibitions against discrimination on the basis of disability, including requirements that multifamily housing projects comply with the Uniform Federal Accessibility Standards, and that you make reasonable accommodations to individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8.

(iii) Title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) and its implementing regulations at 28 CFR part 35.

(iv) The Architectural Barriers Act of 1968 (42 U.S.C. 4151) and the regulations at 24 CFR part 40.

(c) Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any federal grant awarded. It includes, but is not limited to, computers (hardware, software, word processing, email, and Web pages), facsimile machines, copiers, and telephones. When developing, procuring, maintaining, or using EIT, grantees must ensure that the EIT allows:

(i) Employees with disabilities to have access to and use information and data that are comparable to the access and use of data by employees who do not have disabilities; and

(ii) Members of the public with disabilities seeking information or service from a grantee must have access to and use of information and data that are comparable to the access and use of data by members of the public who do not have disabilities. If these standards impose an undue burden on a grantee, they may provide an alternative means to allow the individual to use the information and data. No grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services are generally provided.

o. Relocation Requirements

(1) Requirements.

(a) You must carry out relocation activities in compliance with a relocation plan that conforms to the following statutory and regulatory requirements, as applicable:

(i) Relocation or temporary relocation carried out as a result of rehabilitation under an approved revitalization plan is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), the URA regulations at 49 CFR part 24, and regulations at 24 CFR 968.108 or successor part.

(ii) Relocation carried out as a result of acquisition under an approved revitalization plan is subject to the URA and regulations at 24 CFR 941.207 or successor part.

(iii) Relocation carried out as a result of disposition under an approved revitalization plan is subject to section 18 of the 1937 Act, as amended.

(iv) Relocation carried out as a result of demolition under an approved revitalization plan is subject to the URA regulations at 49 CFR part 24.

(b) You must provide suitable, accessible, decent, safe, and sanitary housing for each family required to

relocate as a result of revitalization activities under your revitalization plan. Any person (including individuals, partnerships, corporations, or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity, is covered by federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the URA, and the implementing government-wide regulation at 49 CFR part 24 and Handbook 1378. These relocation requirements cover any person who moves permanently from real property or moves personal property from real property directly because of acquisition, rehabilitation, or demolition for an activity undertaken with HUD assistance.

(2) Relocation Plan. Each applicant must complete a HOPE VI Relocation plan, in accordance with the requirements stated in section III.C.2. of this NOFA.

(a) The HOPE VI Relocation plan is intended to ensure that PHAs adhere to the URA and that all residents who have been or will be temporarily or permanently relocated from the site are provided with CSS activities such as mobility counseling and direct assistance in locating housing. Your HOPE VI Relocation plan must serve to minimize permanent displacement of current residents of the public housing site who wish to remain in or return to the revitalized community. Your HOPE VI Relocation plan must also furnish alternative permanent housing for current residents of the public housing site who do not wish to remain in or return to the revitalized community. Your CSS program must provide for the delivery of community and supportive services to residents prior to any relocation, temporary or permanent.

(b) You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, nonprofit, and other organizations, and individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. HUD will view favorably innovative programs such as community mentors, support groups, and the like.

(c) If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents

choose to move from your jurisdiction to the surrounding area.

p. Design

HUD is seeking excellence in design. You must carefully select your architects and planners, and enlist local affiliates of national architectural and planning organizations such as the American Institute of Architects, the American Society of Landscape Architects, the American Planning Association, the Congress for the New Urbanism, and the department of architecture at a local college or university to assist you in assessing qualifications of design professionals or in participating on a selection panel that results in the procurement of excellent design services. You should select a design team that is committed to a process in which residents, including young people and seniors, the broader community, and other stakeholders participate in designing the new community.

Your proposed site plan, new units, and other buildings must be designed to be compatible with and enrich the surrounding neighborhood. Local architecture and design elements and amenities should be incorporated into the new or rehabilitated homes so that the revitalized sites and structures will blend into the broader community and appeal to the market segments for which they are intended. Housing, community facilities, and economic development space must be well integrated. You must select members of your team who have the ability to meet these requirements.

q. Internet Access

You must have access to the Internet and provide HUD with e-mail addresses of key staff and contact people.

r. Non-Public Housing Funding for Non-Public Housing or Replacement Units

Public housing funds may only be used to develop Replacement Housing. You may not use public housing funds, which include HOPE VI funds, to develop retail or commercial space, economic development space, or housing units that are not Replacement Housing, as defined in this NOFA.

s. Market-Rate Housing and Economic Development

If you include market-rate housing, economic development, or retail structures in your revitalization plan, such proposals must be supported by a market assessment from an independent third party, credentialed market research firm, or professional. This assessment should describe its assessment of the demand and

associated pricing structure for the proposed residential units, economic development or retail structures, based on the market and economic conditions of the project area.

t. Eminent Domain and Public Use

Section 411 of the FY 2008 Consolidated Appropriations Act, under which this NOFA is funded, prohibits any use of these funds “to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is used only for a public use.” The term “public use” is expressly stated not “to include economic development that primarily benefits private entities.” Accordingly, applications under this NOFA may not propose mixed-use projects in which housing is complemented appreciably with commercial facilities (i.e., economic development), if eminent domain is used for the site.

u. Cost Control Standards.

(1) Your hard development costs must be realistically developed through the use of technically competent methodologies, including cost estimating services, and should be comparable to industry standards for the kind of construction to be performed in the proposed geographic area.

(2) Your cost estimates must represent an economically viable preliminary plan for designing, planning, and carrying out your proposed activities, in accordance with local costs of labor, materials, and services.

(3) Your projected soft costs must be reasonable and comparable to industry standards. Upon award, soft costs will be subject to HUD’s “Safe Harbor” cost control standards. For rental units, these safe harbors provide specific limitations on such costs as developer’s fees (between 9 and 12 percent), PHA administration/consultant cost (no more than 3 to 6 percent of the total project budget), contractor’s fee (6 percent), overhead (2 percent), and general conditions (6 percent). HUD’s Cost Control and Safe Harbor Standards can be found on HUD’s HOPE VI Web site.

(4) If you are eligible for funding, HUD will delete any unallowable items from your budget and may reduce your grant accordingly.

v. Timeliness of Development Activity

Grantees must proceed in a timely manner, as indicated by the timeframes below. Grantees should also refer to section IV.E, Funding Restrictions, for the required expenditure date for FY 2008 HOPE VI grant funds, which is September 30, 2013. The timeframes must be reflected in the form of a

program schedule, in accordance with the criteria below. The program schedule and timeframes apply to applicant’s overall revitalization plan, including activities not funded by HOPE VI grant dollars. For purposes of the application, applicants may (but are not required to) assume a grant award date of September 30, 2008, a grant agreement execution date of October 31, 2008, a date for HUD’s written request for supplemental submissions of November 30, 2008, and a date for HUD’s approval of supplemental submissions of January 31, 2009.

(1) Grantees must submit Supplemental Submissions within 90 calendar days (weekends and holidays are not excluded) from the date of HUD’s written request.

(2) Grantees must submit CSS work plans within 90 calendar days (weekends and holidays are not excluded) from grant agreement execution.

(3) Grantees must submit the development proposal (i.e., whether mixed-finance development, homeownership development, etc.) for the first phase of construction within 12 months of grant agreement execution (not the date of grant award). The program schedule must indicate the date on which the development proposal for each phase of the revitalization plan will be submitted to HUD.

(4) The closing of the first phase must take place within 15 months of grant award. For this purpose, “closing” means all financial and legal arrangements have been executed and actual activities (construction, etc.) are ready to commence.

(5) Grantees must start construction within 12 months from the date of HUD’s approval of the Supplemental Submissions, as requested by HUD. This time period may not exceed 18 months from the date the grant agreement is executed.

(6) Grantees must complete construction within 48 months from the date of HUD’s approval of your Supplemental Submissions. This time period for completion may not exceed 54 months from the date the grant agreement is executed.

(7) If awarded grant funds, all other required components of the revitalization plan and any other submissions not mentioned above must be submitted in accordance with the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

w. HOPE VI Endowment Trust Addendum to the Grant Agreement

This document must be executed between the grantee and HUD in order for the grantee to use CSS funds in accordance with this NOFA.

x. Revitalization Plan

After HUD conducts a post-award review of your application and makes a visit to the site, you will be required to submit components of your revitalization plan to HUD, as provided in the HOPE VI Revitalization Grant Agreement. These components include, but are not limited to:

- (a) Supplemental Submissions, including a HOPE VI Program Budget;
- (b) A Community and Supportive Services work plan, in accordance with guidance provided by HUD;
- (c) A standard or mixed-finance development proposal, as applicable;
- (d) A demolition and disposition application, as applicable; and
- (e) A homeownership proposal, as applicable.

y. Pre-Award Accounting System Surveys

This requirement is hereby incorporated from Section III.C. of the General Section.

z. Name Check Review

This requirement is hereby incorporated from Section III.C. of the General Section.

aa. False Statements

A false statement in an application is grounds for denial or termination of an award and possible punishment as provided in 18 U.S.C. 1001.

bb. Prohibition Against Lobbying Activities

This requirement is hereby incorporated from Section III.C. of the General Section.

cc. Conducting Business in Accordance With Core Values and Ethical Standards

This requirement is hereby incorporated from Section III.C. of the General Section.

dd. Providing Full and Equal Access to Grassroots Faith-Based and Other Community-Based Organizations in HUD Program Implementation

This requirement is hereby incorporated from Section III.C. of the General Section.

ee. Number of Units

The number of units that you plan to develop should reflect your need for replacement units, the need for other

affordable units, and the market demand for market units, along with financial feasibility. The number of planned new construction public housing units may not result in a net increase from the number of public housing units owned, assisted, or operated by the PHA on October 1, 1999, including any public housing units demolished as part of any revitalization effort. The total number of units to be developed may be less than, or more than, the original number of public housing units in the targeted public housing project. HUD will review requests to revitalize projects with small numbers of units on an equal basis with those with large numbers of units.

ff. Environmental Requirements

(1) HUD Approval. HUD notification that you have been selected to receive a HOPE VI grant constitutes only preliminary approval. Grant funds may not be released under this NOFA (except for activities that are excluded from environmental review under 24 CFR part 58 or part 50) until the responsible entity, as defined in 24 CFR 58.2(a)(7), completes an environmental review and you submit and obtain both HUD approval of a request for release of funds and the responsible entity's environmental certification, in accordance with 24 CFR part 58 (or HUD has completed an environmental review under 24 CFR part 50, where HUD has determined to conduct the environmental review).

(2) Responsibility. If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity must assume the environmental review responsibilities for projects being funded by HOPE VI. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing, or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing, or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is

needed to perform the environmental review.

(3) Phase I and Phase II Environmental Site Assessments. If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the ASTM Standards E 1527-05, as amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(4) Request for Release of Funds. You, and any participant in the development process, may not undertake any actions with respect to the project that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you, and any participant in the development process, may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50. In addition, you must carry out any mitigating/remedial measures required by the responsible entity (or HUD). If a remediation plan, where required, is not approved by HUD and a fully funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(5) If the environmental review is completed before HUD approval of the HOPE VI Supplemental Submissions and you have submitted your Request for Release of Funds (RROF), the supplemental submissions approval letter shall state any conditions, modifications, prohibitions, etc., required as a result of the environmental review, including the need for any further environmental review. You must carry out any mitigating/remedial measures required by HUD, or select an alternate eligible property, if permitted by HUD. If HUD does not approve the remediation plan and a fully funded contract with a qualified contractor licensed to perform the required type of

remediation is not executed, HUD reserves the right to determine that the grant is in default.

(6) If the environmental review is not completed and you have not submitted the RROF before HUD approval of the supplemental submissions, the letter approving the supplemental submissions will instruct you and any participant in the revitalization process to refrain from undertaking, obligating, or expending HUD or non-HUD funds on physical activities or other choice-limiting actions until HUD approves your RROF and the related certification of the responsible entity (or HUD has completed the environmental review). The supplemental submissions approval letter also will advise you that the approved supplemental submissions may be modified on the basis of the results of the environmental review.

(7) There must not be any open issues or uncertainties related to environmental issues, public policy factors (such as sewer moratoriums), proper zoning, availability of all necessary utilities, or clouds on title that would preclude development in the requested locality. You will certify to these facts when signing the HOPE VI Revitalization Grant Application Certifications.

(8) HUD's environmental Web site is located at <http://www.hud.gov/offices/cpd/environment/index.cfm>.

gg. Match Donations and Leverage Resources—Post Award

After award, during review of grantee mixed-finance, development, or homeownership proposals, HUD will evaluate the nature of Match and Leverage resources to assess the conditions precedent to the availability of the funds to the grantee. HUD will assess the availability of the participating party(ies)'s financing, the amount and source of financing committed to the proposal by the participating party(ies), and the firm commitment of those funds. HUD may require an opinion of the PHA's and the owner entity's counsel (or other party designated by HUD) attesting that counsel has examined the availability of the participating party's financing, and the amount and source of financing committed to the proposal by the participating party(ies), and has determined that such financing has been firmly committed by the participating party(ies) for use in carrying out the proposal, and that such commitment is in the amount required under the terms of the proposal.

hh. Evidence of Use

Grantees will be required to show evidence that matching resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of matching funds may be substituted after grant award, as long as the dollar requirement is met.

ii. Grantee Enforcement

Grantees must pursue and enforce any commitment (including commitments for services) obtained from any public or private entity for any contribution or commitment to the project or surrounding area that was part of the match amount.

jj. LOCCS Requirements

The grantee must record all obligations and expenditures in LOCCS.

kk. Final Audit

Grantees are required to obtain a complete final closeout audit of the grant's financial statements by a certified public accountant, in accordance with generally accepted government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance. Grant recipients must comply with the requirements of 24 CFR part 84 or 24 CFR part 85, as stated in OMB Circulars A-110, A-87, and A-122, as applicable.

ll. Section 3

HOPE VI grantees must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very-Low-Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. Information about section 3 can be found at HUD's section 3 Web site at <http://www.hud.gov/offices/fheo/section3/section3.cfm>.

mm. General Section References

The following subsections of section III.C.4 of the General Section are hereby incorporated by reference:

- (1) Civil Rights Laws;
- (2) Affirmatively Furthering Fair Housing;
- (3) Economic Opportunities for Low- and Very Low-Income Persons (section 3);
- (4) Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency (LEP);
- (5) Accessible Technology;
- (6) Procurement of Recovered Materials;
- (7) Participation in HUD-Sponsored Program Evaluation;

(8) Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects;

(9) OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs; and
(10) Drug-Free Workplace.

nn. Program Requirements that Apply to Match

See Section III.B.1.

oo. Program Requirements That Apply to Match and Leverage

Applicants must follow these requirements in compiling and documenting their match and leverage resources for purposes of the NOFA.

(1) You must actively enlist other stakeholders who are vested in and can provide significant financial assistance to your revitalization effort, both for match and leverage, and for physical development and CSS.

(2) Types of Resources. HUD seeks to fund mixed-finance developments that use HOPE VI funds to match funds requested and leverage the maximum amount of other funds, particularly from private sources, that will result in revitalized public housing, other types of assisted and market-rate housing, and private retail and economic development. There are four types of resources: Development, CSS, Anticipatory, and Collateral. Development and CSS match and leverage are program requirements. Anticipatory and Collateral leverage are included only in the Leverage rating factor, but follow the requirements below for purposes of scoring.

(3) General Requirements. These general requirements apply to all match and leverage resource commitments.

(a) Firmly Committed. All resources for match and leverage must be firmly committed. "Firmly committed" means that the amount of the resource and its dedication to HOPE VI Revitalization activities must be explicit, in writing, and signed by a person authorized to make the commitment.

(b) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form.

(c) Commitment letters must detail the dollar amount and term of the commitment (e.g., Agency X has committed to the residents of the public housing development \$100,000 for each of 5 years, for a total of \$500,000).

(d) Signature. Resource commitments must be written and be signed a person authorized to make the commitment.

(e) Dating. Match and leverage commitment letters must represent valid and accurate commitments. By including them in the application, the applicant is certifying that they are valid and accurate. Resource commitments from 5 years before the NOFA publication date will not be accepted.

(f) If the commitment document for any match or leverage funds/in-kind services is not included in the application and provided before the NOFA deadline date, the related match or leverage will not be considered.

(g) Depending upon the specific Memorandum of Understanding (MOU), an MOU alone may not firmly commit funds, e.g., when an MOU states that a donation agreement may be discussed in the future. If an MOU does not firmly commit funds, the MOU should be accompanied by commitment letters or contracts.

(h) The PHA's staff time and benefits are not an eligible match or leverage resource.

(i) Resource commitments may only be counted once.

(4) Development Resources.

(a) Types of Development Resources. Types of Development Resources may include but are not limited to:

(i) Private mortgage-secured loans, insured loans and other debt.

(a) Where there is both a construction loan and a permanent take-out loan that will replace that construction loan, you must provide documentation of both, but only the value of the permanent loan will be counted.

(b) If you have obtained a construction loan but not a permanent loan, the value of the acceptably documented construction loan will be counted.

(c) Your application or commitment letters must include each loan's interest rate, expected term maturity, and the frequency of repayment.

(d) For privately financed homeownership, acceptable documentation of construction loans only will be considered. Permanent financing will not be counted as a development resource.

(ii) Donations and contributions.

(iii) Housing trust funds.

(iv) Program income from previous HOPE VI or other public housing projects.

(v) Homeownership down payments from homebuyers will not be counted. Down payment assistance may be counted as a physical development resource if it is provided by a third-party entity not related to the homebuyer.

(vi) Funds committed to build private sector housing in direct connection with the HOPE VI Revitalization plan.

(vii) Tax Increment Financing (TIF). A TIF will only be considered for match/leverage scoring under this NOFA if, as documented in a letter from the unit of local government responsible for approving the TIF: The TIF district has been formally created; the unit of local government responsible for approving the TIF has issued an approval (as of the application deadline) allowing the TIF to benefit the HOPE VI project; and the letter includes an estimate of the amount of resources anticipated to be generated by the TIF in relation to the HOPE VI.

(viii) Bonds. This includes tax-exempt bonds and private activity revenue bonds. Your application must include the dollar amount, a description of the use and term. If you have documentation of funding that will repay the bond, this will be counted instead of the bond.

(ix) Other Public Housing Funds. Other Public Housing sources may be used in your proposal subject to the following criteria. Other Public Housing Funds include HOPE VI Demolition funds, HOPE VI Neighborhood Networks funds, HOPE VI Main Street funds, HOPE VI Mentoring grants, Resident Opportunity and Self-Sufficiency (ROSS) grants, Family Self-Sufficiency (FSS) grants, Capital Fund program funds, and proposals to use operating subsidy for debt service. For Match: Other Public Housing Funds may be counted for match except for the HOPE VI program funds (HOPE VI Demolition, HOPE VI Neighborhood Networks, HOPE VI Main Street, and HOPE VI Mentoring funds), which may not be used for match. For Leverage: Other Public Housing Funds listed above, including the HOPE VI program funds, will be considered under the Anticipatory leverage rating factor, in accordance with the criteria in the Anticipatory leverage rating factor; they will NOT be counted for points under CSS, Development, and Collateral leverage.

(x) Other Federal Funds. Other federal sources may include non-public housing funds provided by HUD.

(xi) Sale of Land. The value of land may be included as a development resource only if this value is a sales proceed. Absent a sales transaction, the value of land may not be counted.

(xii) Donations of Land. Donations of land may be counted as a development resource, only if the donating entity owns the land to be donated. Donating entities may include a city, county/parish, church, community

organization, etc. The application must include documentation of this ownership, signed by the appropriate authorizing official.

(xiii) Low-Income Housing Tax Credits (LIHTC).

(a) Low-Income Tax Credits are authorized by section 42 of the IRS Code, which allows investors to receive a credit against federal tax owed in return for providing funds to developers to help build or renovate housing that will be rented only to lower-income households, for a minimum period of 15 years.

(b) There are two types of credits, both of which are available over a 10-year period: A 9 percent credit on construction/rehab costs, and a 4 percent credit on acquisition costs and all development costs financed partially with below-market federal loans (e.g., tax-exempt bonds). Tax credits are generally reserved annually through State Housing Finance Agencies, a directory of which can be found at <http://www.ncsha.org/section.cfm/4/39/187>.

(c) Only LIHTC commitments that have been secured as of the application deadline date will be considered for match/leverage scoring under this NOFA. LIHTC commitments that are not secured (i.e., documentation in the application does not demonstrate they have been reserved by the state or local housing finance agency) will not be counted for match/leverage scoring. Only tax credits that have been reserved specifically for revitalization performed through this NOFA will be counted.

(d) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form.

(e) If you propose to include LIHTC equity as a development resource for any phase of development, your application must include a LIHTC reservation letter from your state or local housing finance agency in order to have the tax credit amounts counted in match/leverage scoring. This letter must constitute a firm commitment and can only be conditioned on the receipt of the HOPE VI grant. HUD acknowledges that, depending on the housing finance agency, documentation for 4 percent tax credits may be represented in the form of a tax-exempt bond award letter. Accordingly, it will be accepted for match/leverage scoring purposes under this NOFA if you demonstrate that this is the only available evidence of 4 percent tax credits, and assuming that this documentation clearly indicates

that tax-exempt bonds have been committed to the project.

(b) Sources of Development Resources. Sources of Development Resources may include:

(i) Public, private, and nonprofit entities, including LIHTC purchasers;

(ii) State and local housing finance agencies;

(iii) Local governments;

(iv) The city's housing and redevelopment agency or other comparable agency. HUD will consider this to be a separate entity with which you are partnering if your PHA is also a redevelopment agency or otherwise has citywide responsibilities.

(v) Community Development Block Grant (CDBG) funds. More information about the CDBG program can be found at <http://www.hud.gov/offices/cpd/index.cfm>.

(vi) HOME Investment Partnership program. HOME funds may be used for the development of units assisted with HOPE VI funds, but they may not be used for housing assisted with public housing capital funds under section 9(d) of the 1937 Act. Information about the HOME program can be found at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm>.

(vii) Foundations;

(viii) Government Sponsored Enterprises such as the Federal Home Loan Bank, Fannie Mae, and Freddie Mac;

(ix) HUD and other federal agencies;

(x) Financial institutions, banks, or insurers; and

(xi) Other private funders.

(5) Community and Supportive Services Resources

a. General

(1) HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other resources to support CSS activities in order to ensure the successful transformation of the lives of residents and the sustainability of the revitalized public housing development. Match and leveraging of HOPE VI CSS funds with other funds and services is critical to the sustainability of CSS activities so that they will continue after the HOPE VI funds have been expended. Commitments of funding or in-kind services related to the provision of CSS activities may be counted as CSS resources and toward match and the calculation of CSS leverage, in accordance with the requirements below.

(a) CSS leverage and match, include only funds/in-kind services that will be NEWLY GENERATED for HOPE VI

activities and residents. Commitments by service providers to continue services they already provide will not be counted. However, if an existing service provider significantly increases the level of services provided at the targeted site, the increased amount of funds may be counted, except for TANF cash benefits. HUD will not count any funds for leverage points that have already been provided on a routine basis, such as TANF cash benefits and in-kind services that have been supporting ongoing CSS-type activities.

(b) Existing and newly generated TANF cash benefits will not count as leverage. Newly generated non-cash services provided by TANF agencies will count as leverage.

(c) Even though an in-kind CSS contribution may count as a resource, it may not be appropriate to include on the sources and uses attachment. Each source on the sources and uses attachment must be matched by a specific and appropriate use. For example, donations of staff time may not be used to offset costs for infrastructure.

(d) Note that wages projected to be paid to residents through jobs or projected benefits (e.g., health/insurance/retirement benefits) related to projected resources to be provided by CSS partners may not be counted.

(e) Resources must be directly applicable to the revitalization of the targeted public housing project and the transformation of the lives of residents of the targeted public housing project. Resources that are committed to individuals other than the residents of the targeted public housing development cannot be counted.

(2) Types of Community and Supportive Services Resources. Types of Community and Supportive Services resources may include, but are not limited to:

- (a) Materials;
- (b) A building;
- (c) A lease on a building;
- (d) Other infrastructure;
- (e) Time and services contributed by volunteers;
- (f) Staff salaries and benefits of service providers (PHA staff time may not be counted);
- (g) Supplies;
- (h) The value of supportive services provided by a partner agency, in accordance with the eligible CSS activities described in section III.C.1.

(i) Other Public Housing Funds. Other Public Housing sources may be used in your proposal subject to the following criteria. Other Public Housing Funds include HOPE VI Demolition funds, HOPE VI Neighborhood Networks

funds, HOPE VI Main Street funds, HOPE VI Mentoring grants, Resident Opportunity and Self-Sufficiency (ROSS) grants, Family Self-Sufficiency (FSS) grants, Capital Fund program funds, and proposals to use operating subsidy for debt service. For Match: Other Public Housing Funds may be counted for match except for the HOPE VI program funds (HOPE VI Demolition, HOPE VI Neighborhood Networks, HOPE VI Main Street, and HOPE VI Mentoring funds), which may not be used for match. For Leverage: Other Public Housing Funds listed above, including HOPE VI program funds, will be considered under the Anticipatory leverage rating factor, in accordance with the criteria in the Anticipatory leverage rating factor; they will NOT be counted for points under CSS, Development, and Collateral leverage.

(j) Other Federal Funds. Other federal sources may include non-public housing funds provided by HUD.

(3) Sources of Community and Supportive Services Resources. In order to achieve quantifiable self-sufficiency results, you must form partnerships with organizations that are skilled in the delivery of services to residents of public housing and that can provide commitments of resources to support those services. You must actively enlist as partners other stakeholders who are vested in and can provide commitments of funds and in-kind services for the CSS portion of your revitalization effort. See Section III.C.3.m. above for examples of the kinds of organizations and agencies that can provide you with resources necessary to carry out and sustain your CSS activities.

IV. Application and Submission Information

Relevant sections of Section IV of the General Section are hereby incorporated into the FY 2008 HOPE VI Revitalization NOFA, as indicated by their title. Applicants must follow the directions and guidance provided in these sections from Section IV of the General Section, unless otherwise noted in this HOPE VI Revitalization NOFA.

A. Addresses To Request Application Package

This section describes how applicants may obtain application forms and request technical assistance. The published NOFA and application forms are made available at Grants.gov at the following Web site: http://www.grants.gov/applicants/apply_for_grants.jsp.

1. Technical Assistance and Resources for Electronic Grant Applications

a. Grants.gov Customer Support

Grants.gov provides Customer Support information on its Web site at <http://www.grants.gov/contactus/contactus.jsp>. Applicants having difficulty accessing the application and instructions or having technical problems can receive customer support from Grants.gov by calling (800) 518-GRANTS (this is a toll-free number) or by sending an email to support@grants.gov. The customer support center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday, except federal holidays. The customer service representatives will assist applicants in accessing the information and addressing technology issues.

b. HUD Web site

The following documents and information can be found at HUD's Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>.

(1) Desktop Users Guide for Submitting Electronic Grant Applications. HUD has published on its Web site a detailed Desktop Users Guide that walks applicants through the electronic process, beginning with finding a funding opportunity, completing the registration process, and downloading and submitting the electronic application. The guide includes helpful step-by-step instructions, screen shots, and tips to assist applicants to become familiar with submitting applications electronically.

(2) Connecting with Communities: A User's Guide to HUD Programs and the FY 2008 NOFA Process Guidebook. This guidebook to HUD programs will be available from the HUD NOFA Information Center and at the HUD's Funds Available Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm> after the publication of the SuperNOFA. The guidebook provides a brief description of all HUD programs that have funding available in FY 2008, identifies eligible applicants for the programs, and the program office responsible for the administration of the program.

c. HUD's NOFA Information Center

Applicants that do not have Internet access and need to obtain a copy of a NOFA can contact HUD's NOFA Information Center toll-free at (800) HUD-8929. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-

8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

B. Content and Form of Application Submission

The following sections from Section IV(B) of the General Section are hereby incorporated, as indicated by their title.

1. Use of Adobe Forms Application Packages
2. Instructions on How To Register for Electronic Application Submission

Applicants must submit their applications electronically through Grants.gov. Before you can do so, you must complete several important steps to register as a submitter. The registration process can take approximately 2 to 4 weeks to complete. Therefore, registration should be done in sufficient time before you submit your application. To register, applicants must complete five sequential steps as follows:

- a. Step One: Obtain a Dun and Bradstreet Data Universal Numbering System (DUNS).
- b. Step Two: Register with the CCR.
- c. Step Three: Register with the Credential Provider.
- d. Step Four: Register with Grants.gov.
- e. Step Five: Granting Approval of an AOR to Submit an Application on Behalf of the Organization.

3. Instructions on How To Download an Application Package and Application Instructions

Critical Notice: Applicants must be aware that all persons working on the Adobe forms in the application package must work using Adobe 8.1.2 or the latest compatible version of Adobe Reader available from Grants.gov. Please alert your staff and those working on your application that failure to download and use the correct Adobe Reader will result in your not being able to create or submit your application package to Grants.gov or in your application being rejected by Grants.gov.

- a. The Application Package and Application Instructions.

b. Electronic Grant Application Forms. Note: Concerning HUD's standard forms, FY 2008 HOPE VI Revitalization grant applicants must only submit the forms listed in the HOPE VI Revitalization NOFA Section IV(B).

4. Instructions on How To Complete the Selected Grant Application Package

- a. Mandatory Fields on Application Download Forms.
- b. Completion of SF-424 Fields First.
- c. Submission of Narrative Statements, Third-Party Letters, Certifications, and Program-Specific Forms.

5. Steps To Take Before You Submit Your Application

6. HOPE VI-Specific Application and Submission Information

- a. Application Layout

These criteria apply to all HOPE VI Revitalization grant applicants, unless otherwise noted.

(1) Double-space your narrative pages. Single-spaced pages will be counted as two pages;

(2) Use 8½ x 11-inch paper (one side only, if you receive a waiver of the electronic submission). Only the city map may be submitted on an 8½ by 14-inch sheet of paper. Larger pages will be counted as two pages;

(3) All margins should be approximately one inch. If any margin is smaller than ½ inch, the page will be counted as two pages;

(4) Use 12-point, Times New Roman font;

(5) Any pages marked as sub-pages (e.g., with numbers and letters such as 75A, 75B, 75C), will be treated as separate pages;

(6) If a section is not applicable, indicate n/a;

(7) Mark each Exhibit and Attachment with the appropriate tab/title page, as listed below. No material on the tab/title page will be considered for review purposes;

(8) No more than one page of text may be placed on one sheet of paper; i.e., you may not shrink pages to get two or more on a page. Shrunken pages, or pages where a minimized/reduced font are used, will be counted as multiple pages;

(9) Do not format your narrative in columns. Pages with text in columns will be counted as two pages;

(10) If you are granted a waiver from the electronic submission requirement: The applications (copy and original) should each be packaged in a three-ring binder; and

(11) Narrative pages must be numbered. HUD recommends that applicants consecutively number the pages of the Attachments section to ensure proper assembly of their application if submitted electronically.

- b. Application Page Count

These criteria apply to all applicants.

- (1) Narrative Exhibits.

(a) The first part of your application will be comprised of narrative exhibits. Your narratives will respond to each rating factor in the NOFA and will also respond to threshold requirements. Among other things, your narratives must describe your overall planning activities, including, but not limited to, relocation, community, and supportive services, and development issues.

(b) Each HOPE VI Revitalization application must contain no more than 100 pages of narrative exhibits. Any pages after the first 100 pages of narrative exhibits will not be reviewed. Although submitting pages in excess of the page limitations will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure of a threshold. Text submitted at the request of HUD to correct a technical deficiency will not be counted in the 100-page limit.

- (2) Attachments.

(a) The second part of your application will be comprised of Attachments. These documents will also respond to the rating factors in the NOFA, as well as threshold and mandatory documentation requirements. They will include documents such as maps, photographs, letters of commitment, application data forms, various certifications unique to HOPE VI Revitalization, and other certifications.

(b) Each HOPE VI Revitalization application must contain no more than 125 pages of attachments. Any pages after the first 125 pages of attachments will not be considered. Although submitting pages in excess of the page limit will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

(3) Exceptions to page limits. The documents listed below constitute the only exceptions and are not counted in the page limits listed in Sections (1) and (2) above:

(a) Additional pages submitted at the request of HUD in response to a technical deficiency.

(b) Attachments that provide documentation of commitments from Development, CSS, Collateral, and Anticipatory resource providers (Attachments 19-22).

(c) Attachments that provide documentation of site control and site acquisition, in accordance with Section III of this NOFA (Attachment 18).

(d) Narratives and Attachments, as relevant, required to be submitted only by existing HOPE VI Revitalization

grantees, in accordance with Sections V.A. of this NOFA (Capacity).

(e) Information required of MTW or existing HOPE VI Revitalization grantee applicants only.

(f) Standard forms (Attachment 33).

(g) Blank/extra pages generated as part of standard forms.

(h) Tabs/title pages that are blank or display a title/header/"n/a" indication.

c. HOPE VI-Specific Electronic Submission Requirements: Additional Format and Title Instructions in Addition to Those in the General Section

(1) Exhibits. Exhibits are as listed below in Section IV.B.6.e of this NOFA. Each Exhibit should be contained in a separate file and section of the application. Each file should contain one title page. Do not create title pages separately from the document it goes with.

(a) Exhibit Title Pages. HUD will use title pages as tabs when it downloads and prints the application. Provided the information on the title page is limited to the list in Section (b) below, the title pages will not be counted when HUD determines the length of each Exhibit, or the overall length of the Exhibits.

(i) Each title page should only contain:

(A) The name of the Exhibit, as described below in section IV.B.6.e of this NOFA, e.g., "Narrative Exhibit A: Summary Information;"

(B) The name of the applicant; and

(C) The name of the file that contains the Exhibit.

(b) Exhibit File Names and Types.

(i) All Exhibit files in the application must be contained in one Exhibit ZIP file.

(ii) Each file within the ZIP file must be formatted so it can be read by Microsoft Word Office 2007 (or earlier) (.doc) or in Adobe (.pdf) format that is compatible with Adobe Reader 8.1.2.

(iii) Each file name must include the information below, in the order stated:

(A) Short version of the applicant's name, e.g., town, city, county/parish, etc., and state; and

(B) The word "Exhibit" and the Exhibit letter (A through I), as listed in section IV.B.6.e of this NOFA;

(C) An example of an Exhibit file name is, "Atlanta GA Exhibit A."

(2) Attachments. Attachments are as listed below in section IV.B.6.e of this NOFA. Each Attachment should be contained in a separate file and section of the application. Each Attachment that is not a HUD form should contain one title page.

(a) Attachment Title Pages. HUD will use title pages as tabs if it downloads

and prints the application. Provided the information on the title page is limited to the list in section (b) below, the title pages will not be counted when HUD determines the length of each Attachment or the overall length of the Attachments. HUD forms do not require title pages.

(i) Each title page should only contain:

(A) The name of the Attachment, as described below in section IV.B.6.e of this NOFA, e.g., "Attachment 10: Extraordinary Site Costs Certification;"

(B) The name of the applicant; and

(C) The name of the file that contains the Attachment.

(b) Attachment File Names and Types.

(i) All Attachments that are not listed separately on grants.gov and are formatted as Adobe forms, e.g., SF-424, must be contained in one (or more as needed) Attachment ZIP file.

(ii) Each file within the ZIP file must be formatted so it can be read by Microsoft Word Office 2007 (or earlier) (.doc), Microsoft Excel (.xls) 2007 (or earlier) or in Adobe (.pdf) format that is compatible with Adobe Reader 8.1.2.

(A) Attachments that are downloaded from grants.gov in MS Excel format may be submitted in Excel format.

(B) Attachments that are downloaded from grants.gov in text format, e.g., certifications, should be submitted in Adobe Acrobat (.pdf) format that is compatible with Adobe Reader 8.1.2.

(C) Third-party documents, e.g., leverage commitment letters, pictures, etc., should be scanned and attached to your electronic application in Adobe Acrobat (.pdf) format that is compatible with Adobe Reader 8.1.2 or may be submitted via facsimile using form HUD-96011, Third Party Documentation Facsimile Transmittal ("Facsimile Transmittal Form" on Grants.gov). Also:

(iii) Each file name must include the information below, in the following order:

(A) A short version of the applicant's name, e.g., the town, city, county/parish, etc., and state; and

(B) The word "Attachment" and the Attachment number, as listed in section IV.B.6.e of this NOFA;

(C) An example of an Exhibit file name is, "Atlanta GA Attachment 1."

d. Documentation Requirements

Documentation requirements are provided in the "Threshold Requirements" section (Section III.C.2.), "Program Requirements" section (Section III.C.3), and "Rating Factors" section (Section V.A) of this NOFA. Applicants must carefully review and follow documentation requirements.

e. Application Content

The following is a list of narrative exhibits, attachments, and instructions for each, that are required as part of the application. Applicant should include a completed Table of Contents of the exhibits and attachments. Non-submission of the items below may lower your rating score or make you ineligible for award under this NOFA. Review the threshold requirements in section III.C. and the Rating Factors of section V.A. to ascertain the effects of non-submission. HUD forms required by this NOFA are included in the electronic application at http://www.grants.gov/applicants/apply_for_grants.jsp.

Table of Contents

a. Exhibit A

Verify that you have included information relating to the following exhibits.

(1) Executive Summary. Provide an Executive Summary, not to exceed three pages. Describe your Revitalization plan, as clearly and thoroughly as possible. Do not argue for the need for the HOPE VI grant, but explain what you would do if you received such a grant. Briefly describe why the targeted project is severely distressed, provide the number of units, and indicate how many of the units are occupied. Describe specific plans for the revitalization of the site. Include income mix, basic features (such as restoration of streets), and any mixed use or non-housing components. If you are proposing off-site replacement housing, provide the number and type of units and describe the off-site locations.

Describe any homeownership components included in your Plan, including the numbers of units. Briefly summarize your plans for community and supportive services. State the amount of HOPE VI funds you are requesting and list the other major funding sources you will use for your mixed-finance development. Identify whether you have procured a developer or whether you will act as your own developer.

(2) Physical Plan. Describe your planned physical revitalization activities:

(a) Rehabilitation of severely distressed public housing units, in accordance with sections I(C) and III(C) of the NOFA;

(b) Development of public housing replacement rental housing, both on-site and off-site, in accordance with sections I(C) and III(C) of the NOFA;

(c) Indicate whether you plan to use PATH technologies and Energy Star in

the construction of replacement housing, in accordance with section III(C) of the NOFA;

(d) Market rate housing units (see section III(C));

(e) Units to be financed with low-income housing tax credits;

(f) Replacement homeownership assistance for displaced public housing residents or other public housing-eligible low-income families, in accordance with sections I(C) and III(C) of the NOFA. Also describe any market-rate homeownership units planned, sources, and uses of funds. Describe the relationship between the HOPE VI activities and costs and the development of homeownership units, both public housing and market rate. If you are selected for funding, you will be required to submit a Homeownership Proposal (homeownership term sheet);

(g) Rehabilitation or new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the targeted development and residents of off-site replacement housing, in accordance with sections I(C) and III(C). Describe the type and amount of such space and how the facilities will be used in CSS program delivery or other activities;

(h) Zoning, land acquisition, and infrastructure and site improvements. Note that HOPE VI grant funds may not be used to pay hard development costs or to buy equipment for retail or commercial facilities;

(3) Hazard Reduction. Review sections I(C), III(C), and IV(E) of the NOFA. For units to be rehabilitated or demolished, describe the extent of any required abatement of environmentally hazardous materials such as asbestos.

(4) Demolition. Review sections I(C) and III(C) of the NOFA. Describe your plans for demolition, including the buildings (dwelling and non-dwelling units) proposed to be demolished, the purpose of the demolition, and the use of the site after demolition. If the proposed demolition was previously approved as a section 18 demolition application, state the date the section 18 demolition application was submitted to HUD and the date it was approved by HUD. Indicate whether you plan to implement the concept of Deconstruction, as described in section III(C) of the NOFA.

(5) Disposition. Review sections I(C) and III(C) of the NOFA. Describe the extent of any planned disposition of any portion of the site. Cite the number of units or acreage to be disposed, the method of disposition (sale, lease, trade), and the status of any disposition application made to HUD.

(6) Site Improvements. Review sections I(C), III(C), and IV(E) of the NOFA. Describe any proposed on-site improvements, including infrastructure requirements, changes in streets, etc. Describe all public improvements needed to ensure the viability of the proposed project with a narrative description of the sources of funds available to carry out such improvements.

(7) Site Conditions. Review sections I(C), III(C), and IV(E) of the NOFA. Describe the conditions of the site to be used for replacement housing. Listing all potential contamination or danger sources (e.g., smells, fire, heat, explosion, and noise) that might be hazardous or cause discomfort to residents, PHA personnel, or construction workers. List potential danger sources, including commercial and industrial facilities, brownfields and other sites with potentially contaminated soil, commercial airports, and military airfields. Note any facilities and/or activities within one mile of the proposed site.

(8) Separability. See Section III(C) of the NOFA. If applicable, address the separability of the revitalized building(s) within the targeted project. This is a threshold.

(9) Proximity. If applicable, describe how two contiguous projects meet the requirement of section III(C) of the NOFA, or how scattered sites meet the requirements of section III(C) of the NOFA.

b. Exhibit B. Capacity

Verify that you have included information relating to the following exhibits:

(1) PHAS and SEMAP. Respond to the Rating Factors at V(A)(1)(g) and V(A)(1)(h) of the NOFA.

(2) Capacity of the Development Team. Respond to Rating Factor V(A)(1)(a).

(3) Development Capacity of Applicant. Respond to Rating Factor V(A)(1)(b).

(4) Capacity of Existing HOPE VI Revitalization grantees. Respond to Rating Factor V(A)(1)(c) of the NOFA.

(5) CSS Program Capacity. Respond to Rating Factor V(A)(1)(d) of the NOFA.

(6) Property Management Capacity. Respond to Rating Factor V(A)(1)(e) of the NOFA.

(7) PHA or MTW Plan. Respond to Rating Factor V(A)(1)(f) of the NOFA.

c. Exhibit C. Need

Verify that you have included information relating to the following:

(1) Need for Revitalization: Severe Physical Distress of the Public Housing

Project. Respond to Rating Factor V(A)(2)(a) of the NOFA.

(2) Need for Revitalization: Severe Distress of the Surrounding Neighborhood. Respond to Rating Factor V(A)(2)(b) of the NOFA.

(3) Need for HOPE VI Funding. Respond to Rating Factor V(A)(2)(c) of the NOFA.

(4) Sites Previously Funded. Respond to section III(C)(2) (specifically Section III.C.2.b.4) of the NOFA. This is a threshold requirement.

(5) Need for Affordable Accessible Housing in the Community. Respond to Rating Factor V(A)(2)(d) of the NOFA.

d. Exhibit D. Resident and Community Involvement

Verify that you have included information relating to the following. Discuss your communications about your development plan and HUD communications with residents, community members, and other interested parties. Include the resident training attachment. Review program requirements in section III and respond to Rating Factor V(A)(4).

e. Exhibit E. Community and Supportive Services

Respond to section V(A)(5). Verify that you have included information relating to the following: *Endowment Trust*. If you plan to place CSS funds in an Endowment Trust, review section III(C) and section V(A)(5), and state the dollar amount and percentage of the entire grant that you plan to place in the Trust.

f. Exhibit F. Relocation

Verify that you have included information relating to the following:

(1) *Housing Choice Voucher (HCV) Needs*. Review section III(C) and V(A)(6) of the NOFA. State the number of HCVs that will be required for relocation if this HOPE VI application is approved, both in total and the number needed for FY 2008. Indicate the number of units and the bedroom breakout. Applicants must prepare their HCV assistance applications for the targeted project in accordance with the requirements of Notice PIH 2007-10 (and any reinstatement of or successor to that Notice) and submit it in its entirety with the HOPE VI Revitalization Application (not just form HUD 52515). This application should be placed at the back of the application with the other Standard Forms and Certifications. HUD will process the HCV assistance applications for funded HOPE VI applicants.

(2) *Relocation Plan*. Review sections III(C)(2) and III(C)(3) of the NOFA and

respond to Rating Factor V(A)(6). For additional guidance, refer to Handbook 1378 and form HUD-52774.

g. Exhibit G. Fair Housing and Equal Opportunity

Verify that you have included information relating to the following:

(1) Accessibility. Respond to Rating Factor V(A)(7)(a)(1).

(2) Universal Design. Respond to Rating Factor V(A)(7)(a)(2).

(3) Fair Housing and Affirmatively Furthering Fair Housing. Respond to Rating Factor V(A)(7)(b).

(4) Economic Opportunities for Low- and Very Low-Income Persons (Section 3). Respond to Rating Factor V(A)(7)(c).

h. Exhibit H

Verify that you have included information relating to the following:

(1) Unit Mix and Need for Affordable Housing. Respond to Rating Factor V(A)(8)(a);

(2) Off-Site Housing. Respond to Rating Factor V(A)(8)(b); and

(3) Homeownership Housing. Respond to Rating Factor V(A)(8)(c).

i. Exhibit I

Verify that you have included information relating to the following:

(1) Appropriateness of Proposal.

Respond to the threshold requirement in section III(C)(2).

(2) Appropriateness and Feasibility of the Plan. Respond to Rating Factor V(A)(9)(b);

(3) Neighborhood Impact and Sustainability of the Plan. Respond to Rating Factor V(A)(9)(c);

(4) Project Readiness. Respond to Rating Factor V(A)(9)(d) by completing the certification form provided;

(5) Program Schedule. Respond to Rating Factor V(A)(9)(e);

(6) Design. Describe the features of your proposed design and respond to Rating Factor V(A)(9)(f);

(7) Energy Star. Respond to Rating Factor V(A)(9)(g); and

(8) Evaluation. Respond to Rating Factor V(A)(9)(h).

j. Attachments 1 Through 7

These attachments are required in all applications. For instruction on how to fill out Attachments 1 through 7, see Appendix 1, Instructions for the HOPE VI Application Data Forms.

k. Attachment 8

This attachment is required in all applications. In addition to the instructions included in the HOPE VI Budget form, general guidance on preparing a HOPE VI budget can be found on the Grant Administration page

of the HOPE VI Web site, <http://www.hud.gov/offices/pih/programs/ph/hope6/>.

l. Attachment 9

Form HUD-52799, "TDC/Grant Limitations Worksheet"

This attachment is required in all applications. The Excel workbook will assist you in determining your TDC limits required in section IV.E.

m. Attachment 10 Extraordinary Site Costs Certification

This attachment is applicable only if you request funds to pay for extraordinary site costs, outside the TDC limits. See section IV.E.

n. Attachment 11 City Map

This attachment is required in all applications. Review section III(C). Provide a to-scale city map that clearly labels the following in the context of existing city streets, the central business district, other key city sites, and census tracts:

(1) The existing development;

(2) Replacement neighborhoods, if available;

(3) Off-site properties, if any;

(4) Other useful information to place the project in the context of the city, county/parish, or municipality, and other revitalization activity underway or planned.

If you request funds for more than one project or for scattered site housing (see the Contiguous, Single, and Scattered-Site Projects threshold requirement in Section III.C.2), the map MUST clearly show that the application meets the NOFA's site and unit requirements. If you have received a waiver from the electronic submission requirement, this map may be submitted on 8½" by 14" paper.

o. Attachment 12

Assurances for a HOPE VI Application: For Developer, HOPE VI Revitalization Resident Training and Public Meeting Certification, and Relocation Plan (whether relocation is completed or is yet to be completed). Please complete this assurance document. Do not sign; a signature is not required.

p. Attachment 13 Program Schedule Review Rating Factor V.A.9.e.

q. Attachment 14

Certification of Severe Physical Distress. This attachment is required in all applications. In accordance with sections I(C) and III(C)(2) and (3), an engineer or architect must complete Attachment 14. No backup

documentation is required for this certification.

r. Attachment 15

Photographs of the Severely Distressed Housing. This attachment is required in all applications. Review Rating Factor V(A)(2)(a). Submit photographs of the targeted severely distressed public housing that illustrate the extent of physical distress.

s. Attachment 16 Neighborhood Conditions

This attachment is required in all applications. Submit documentation described in Rating Factor V(A)(2)(b). Documentation may include crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and other indications of neighborhood distress and/or disinvestment.

t. Attachment 17 Preliminary Market Assessment Letter, if Relevant

This is applicable if you include market rate housing in your application, in accordance with Rating Factor V(A)(9)(b), Soundness of Approach, Appropriateness and Feasibility of the Plan.

u. Attachment 18 Documentation of Site Control for Off-Site Public Housing

This is applicable if your plan includes off-site housing or other development. If applicable, provide evidence of site control for rental replacement units or land, in accordance with section III(C)(2). See section IV(B) for documentation requirements. You must include a cover sheet with your documented evidence of site control in the Attachments section. This cover sheet must provide a table that matches the off-site parcels proposed in your application for housing development to the corresponding documented evidence of site control for those parcels. Specifically, this table should provide in one column the name of each parcel, as identified in your application. A second column should contain the name of the documented evidence corresponding to each parcel. A third column should provide the location of the documented evidence in the attachment (page number, etc.) and any other necessary detail about the evidence. If more than one unit will be built on a parcel, this must also be identified in the table. The purpose of this table is to aid reviewers' ability to determine whether your application

complies with this threshold. Accordingly, applicants should provide site control information as clearly and consistently as possible.

v. Attachments 19 Through 22 HOPE VI Revitalization Leverage Resources, Form HUD-52797

These attachments are included in form HUD-52797, "HOPE VI Revitalization Leverage Resources" and are required in all applications.

(1) Physical Development Resources. In accordance with Rating Factor V(A)(3)(b), complete Attachment 19, as provided in the application, by entering the dollar value of each resource that will be used for physical development. For each resource entered, you must submit backup documentation in Attachment 19. See section III.C, "Program Requirements" and "Program Requirements that Apply to Match and Leverage" for resource and documentation requirements.

(2) CSS Resources. In accordance with Rating Factor V(A)(3)(c), complete this Attachment 20, as provided in the application, by entering the dollar value of all resources that will be used for CSS activities. For each resource entered, submit backup documentation in Attachment 20. See section III.C, "Program Requirements" and "Program Requirements that Apply to Match and Leverage" for resource and documentation requirements.

(3) Anticipatory Resources. Complete Attachment 21, as provided in the Application, by entering the dollar value of all anticipatory resources as described in Rating Factor V(A)(3)(d). For each resource entered, submit backup documentation in Attachment 21. See section III.C, "Program Requirements" and "Program Requirements that Apply to Match and Leverage" for resource and documentation requirements.

(4) Collateral Resources. Complete Attachment 22, as provided in the Application, by entering the dollar value of all collateral resources as described in Rating Factor V(A)(3)(e). For each resource entered, submit backup documentation behind Attachment 22. See section III.C, "Program Requirements" and "Program Requirements that Apply to Match and Leverage" for resource and documentation requirements.

w. Attachment 23 Sites Previously Funded, if Applicable

If you need to provide a listing of units as described in the threshold requirement found in Section III.C.2.b.4, do so in this attachment.

x. Attachment 24 Land Use Certification or Documentation

Complete this certification in accordance with the land use threshold in section III(C)(2). This attachment may be a certification or copies of the actual land use documentation. The certification may be in the form of a letter.

y. Attachment 25 Evaluation Commitment Letter(s)

This attachment is required in all applications. Review section V(A)(9)(h) and provide the requested commitment letter(s) that addresses the indicated evaluation areas.

z. Attachment 26 Current Site Plan

This attachment is required in all applications. The Site Plan shows the targeted public housing site's various buildings and identifies which buildings are to be rehabilitated, demolished, or disposed of. Demolished buildings should be shown and labeled as such.

aa. Attachment 27 Photographs of Architecture in the Surrounding Community

This attachment is required in all applications. Provide photographs to demonstrate that your plan conforms to the Design requirements of section III.C.3. and Rating Factor V(A)(9)(f).

bb. Attachment 28 Conceptual Site Plan

This attachment is required in all applications. The Conceptual Site Plan indicates where your plan's proposed construction and rehabilitation activities will take place and any planned acquisition of adjacent property and/or buildings. Review the design requirements of section III.C.3. and Rating Factor V(A)(9)(f).

cc. Attachment 29 Conceptual Building Elevations

This attachment is required in all applications. Review the design requirements of section III.C.3. and Rating Factor V(A)(9)(f). Include building elevation drawings for the various types of your proposed housing.

dd. Attachment 30 HOPE VI Revitalization Application Certifications

This attachment is required in all applications. This form is contained in the electronic application at http://www.grants.gov/applicants/apply_for_grants.jsp. Note that these certifications (four page document) must be signed by the chairman of the board of the PHA, not the executive director.

ee. Attachment 31 HOPE VI Revitalization Project Readiness Certification, Form HUD-52787

This attachment is required in all applications. Complete Attachment 31 by indicating which of the items in Rating Factor V(A)(9)(d) of the NOFA have been completed.

ff. Attachment 32 Capital Fund Financing Program Threshold: Legal Counsel Opinion and Executive Director Certification, if Applicable

Review the CFFP threshold requirement in section III(C)(2) and provide an opinion from your legal counsel and certification from the executive director, if applicable, in accordance with the criteria.

gg. Attachment 33 Standard Forms and Certifications

(a) Application for Federal Assistance (SF-424). Note: Applicants must enter their legal name in box 8.a. of the SF-424 as it appears in the Central Contractor Register (CCR). See the General Section regarding CCR registration. This form will be placed at the front of your application;

(b) Acknowledgment of Application Receipt (form HUD-2993), which is applicable ONLY if the applicant obtains a waiver from the electronic submission requirement; this will be placed at the front of your application;

(c) Disclosure of Lobbying Activities (SF-LLL), if applicable;

(d) Applicant/Recipient Disclosure/Update Report (form HUD-2880) ("HUD Applicant Recipient Disclosure Report" on Grants.gov);

(e) Program Outcome Logic Model (form HUD-96010);

(f) America's Affordable Communities Initiative (form HUD-27300) and supporting documentation;

(g) If applicable, Funding Application for Housing Choice Voucher Assistance prepared in accordance with Notice PIH 2007-10 (and any reinstatement of or successor to that Notice), including Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program, and form HUD-52515. It is applicable only if you are requesting HCVs that are related to your proposed plan. In preparing the request for vouchers, applicants must follow PIH Notice 2007-10 and any successor notices;

(h) If applicable, Section 3 Annual Summary Report (Form HUD 60002), in response to Rating Factor V(A)(7)(c)(3).

(i) Form HUD-96011, "Third Party Documentation Facsimile Transmittal" ("Facsimile Transmittal Form" on Grants.gov), if applicable.

C. Submission Dates and Times

The following sections from Section IV(C) of the General Section are hereby incorporated, as indicated by their title. Applications submitted through Grants.gov must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. Validation can take up to 48 hours from the time of submission, depending on file size and what is in the queue at Grants.gov awaiting validation. There are several steps in the upload, receipt, and validation process, so applicants are advised to submit their applications at least 48 to 72 hours in advance of the deadline date and when the Grants.gov help desk is open so that any problems can be addressed prior to the deadline date and time. Submitting at least 72 hours in advance of the deadline will allow an applicant that receives a Grants.gov rejection notice to correct any issues, timely resubmit the application with the errors corrected, and then have adequate time for the validation to occur prior to the deadline date. HUD also recommends uploading your application using Internet Explorer or Netscape. See the General Section for detailed information regarding the following topics, hereby incorporated:

1. Confirmation of Submission to Grants.gov.
2. Application Submission Validation Check.
3. Application Validation and Rejection Notification.
4. Timely Receipt Requirements and Proof of Timely Submission.
 - a. Proof of Application Submission.
 - b. Confirmation Receipt.
 - c. Validation Receipt via Email.
 - d. Rejection Notice.
 - e. Save and File Receipts.
 - f. Grants.gov Support Ticket Numbers.
5. Submission Tips.
 - a. Delayed Transmission Time.
 - b. Ensure You Have Installed the Free Grants.gov Software.
6. Late applications.

D. Intergovernmental Review/State Points of Contact (SPOC)

Section IV(D) of the General Section are hereby incorporated.

E. Funding Restrictions

1. Statutory Time Limits

a. **Required Obligation Date.** Funds appropriated for the HOPE VI program for FY 2008 must be obligated by HUD on or before September 30, 2008. Any funds that are not obligated by that date will be recaptured by the Treasury, and thereafter will not be available for obligation for any purpose.

b. **Required Expenditure Date.** In accordance with 31 U.S.C. 1552, all FY 2008 HOPE VI funds must be expended by September 30, 2013. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

2. Ineligible Activities

a. You may not use HOPE VI Revitalization grant funds to pay for any revitalization activities carried out on or before the date of the letter announcing the award of the HOPE VI Grant.

b. **Market-Rate Units.** HOPE VI funds may not be used to develop market-rate units or affordable housing units that do not qualify as public housing or homeownership replacement units.

c. **Retail or Commercial Development.** HOPE VI funds may not be used for hard construction costs related to, or for the purchase of equipment for, retail, commercial, or non-public housing office facilities.

3. Total Development Cost (TDC)

a. The "TDC Limit" (24 CFR 941.306, Notice PIH 2007-19 (HA), or successor Notice) refers to the maximum amount of HUD funding that HUD will approve for development of specific public housing and other eligible replacement housing units to be developed under a HOPE VI Revitalization grant and/or under an Annual Contributions Contract for public housing development and modernization of public housing under the Capital Fund. The TDC limit applies only to the costs of development of public housing that are paid directly with HUD public housing funds, including HOPE VI funds; a PHA may exceed the TDC limit using non-public housing funds such as CDBG, HOME, low-income housing tax credit equity, etc.

b. The HUD TDC Cost Tables are issued for each calendar year for the building type and bedroom distribution for the public housing replacement units. When making your TDC calculations, use the TDC limits in effect at the time this HOPE VI NOFA is published. TDC definitions and limits in the final rule are summarized as follows:

(1) The total cost of development, which includes relocation costs, is limited to the sum of:

(a) Up to 100 percent of HUD's published TDC limits for the costs of demolition and new construction, multiplied by the number of HOPE VI public housing replacement units; and

(b) Ninety percent of the TDC limits, multiplied by the number of public

housing units after substantial rehabilitation and reconfiguration.

(2) The TDC limit for a project is made up of the following components:

(a) **Housing Cost Cap (HCC):** HUD's published limit on the use of public housing funds for the cost of constructing the public housing units, which includes unit hard costs, builder's overhead and profit, utilities from the street, finish landscaping, and a hard cost contingency. Estimates should take into consideration the Davis-Bacon minimum wage rate and other requirements as described in "Labor Standards," section III.C. of this NOFA. You may not request HOPE VI Revitalization grant funds for units currently under construction or already completed as of the application deadline.

(b) **Community Renewal (CR):** The balance of funds remaining within the project's TDC limit after the housing construction costs described in (a) above are subtracted from the TDC limit. This is the amount of public housing funds available to pay for PHA administration, planning, infrastructure and other site improvements, community and economic development facilities, acquisition, relocation, demolition, and remediation of units to be replaced on-site, and all other development costs.

(3) **CSS.** You may request an amount not to exceed 15 percent of the total HOPE VI grant to pay the costs of CSS activities, as described in section III.C. of this NOFA. These costs are in addition to, i.e., excluded from, the TDC calculation above.

(4) **Demolition and Site Remediation Costs of Unreplaced On-site Units.** You may request an amount necessary for demolition and site remediation costs of units that will not be replaced on-site. This cost is in addition to (i.e., excluded from) the TDC calculation above.

(5) **Extraordinary Site Costs.**

(a) You may request a reasonable amount to pay extraordinary site costs, which are construction costs related to unusual pre-existing site conditions that are incurred, or anticipated to be incurred. If such costs are significantly greater than those typically required for similar construction, are verified by an independent, certified engineer or architect (see section IV.B. for documentation requirements), and are approved by HUD, they may be excluded from the TDC calculation above. Extraordinary site costs may be incurred in the remediation and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: Abatement of extraordinary

environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, etc.; and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint from structures are normal demolition costs. Extraordinary measures to remove lead-based paint that has leached into the soil would constitute an extraordinary site cost.

(b) Extraordinary site costs must be justified and verified by a licensed engineer or architect who is not an employee of the PHA or the city. The engineer or architect must provide his or her license number and state of registration. If this certification is not included in the application after the cure period described in section IV.B.4. of the General Section, extraordinary site costs will not be allowed in the award amount. In that case, the amount of the extraordinary site costs included in the application will be subtracted from the grant amount.

4. Cost Control Standards

See the Cost Control Standards in Section III.C.3.u.

5. Withdrawal of Grant Amounts

In accordance with section 24(i) of the 1937 Act, if a grantee does not proceed within a reasonable timeframe, as described in section III.C.3.w. (Timeliness of Development Activities) of this NOFA, HUD shall withdraw any unobligated grant amounts. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the Revitalization plan of the original grantee.

F. Other Submission Requirements

The following sections from Section IV(F) of the General Section are hereby incorporated, as indicated by their title.

1. Discrepancies between the **Federal Register** and Other Documents.
2. Application Certifications and Assurances.
3. Waiver of Electronic Submission Requirements.

V. Application Review Information

A. Criteria

1. Rating Factor: Capacity—23 Points Total

a. Capacity of the Development Team—5 points

Address this Rating Factor through your narrative. This rating factor looks at the capacity of the development team, separate from the applicant. The Development Team includes any alternative management entity that will participate in management of the revitalization process and have responsibility for meeting construction time tables and obligating amounts in a timely manner. This includes any developer partners, program managers, property managers, subcontractors, consultants, attorneys, financial consultants, and other entities or individuals identified and proposed to carry out program activities.

(1) You will receive up to 5 points if your application demonstrates that:

(a) Your developer or other team members have extensive, recent (within the last 5 years), and successful experience in the redevelopment of public housing, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(b) Your developer or other team members have extensive, recent (within the last five years), and successful experience in mixed-finance and mixed-income development, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(c) If you propose development using low-income tax credits, your developer or other team members have relevant tax credit experience; and

(d) If homeownership, rent-to-own, cooperative ownership, or other major development components are proposed, your developer or other team member has relevant, recent (within the last 5 years) and successful experience in development, sales, or conversion activities.

(2) You will receive up to 3 points if your developer or other team members have some but not extensive experience in the factors described above.

(3) You will receive zero points if your developer or other team members do not have the experience described above and the application does not demonstrate that it has the capacity to carry out your Revitalization plan. You will also receive zero points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

b. Development Capacity of Applicant—5 Points

Address this Rating Factor through your narrative. This rating factor looks at the development capacity of ONLY the applicant (not other members of the development team).

(1) You will receive up to 5 points if your application demonstrates that:

(a) Separate from your team, you have extensive, recent (within the last 5 years), and successful experience in the redevelopment of public housing, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(b) Separate from your team, you have extensive, recent (within the last 5 years), and successful experience in mixed-finance and mixed-income development, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(c) If you propose development using low-income tax credits, your PHA staff, separate from your team, have relevant tax credit experience; and

(d) If homeownership, rent-to-own, cooperative ownership, or other major development components are proposed, your PHA staff, separate from your team, has relevant, recent (within the last 5 years) and successful experience in development, sales, or conversion activities.

(1) You will receive up to 3 points if you have some but not extensive experience in the factors described above.

(2) You will receive zero points if you do not have the experience described and the application does not demonstrate that it has the capacity to carry out your Revitalization plan. You will also receive zero points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. Capacity of Existing HOPE VI Revitalization Grantees

HUD will use data from the Quarterly Reports to evaluate this Rating Factor.

(1) This section applies only to applicants that have received HOPE VI Revitalization grants for FYs 1993 to 2004. If an applicant has more than one HOPE VI Revitalization grant, each will be rated separately, not averaged, and the highest deduction will be made. Applicants with HOPE VI Revitalization grants only from FY 2005, FY 2006, or FY 2007, or no existing HOPE VI Revitalization grants are not subject to this section.

(2) As indicated in the following tables, up to 5 points will be deducted

if a grantee has failed to achieve adequate progress in relation to expenditure of HOPE VI Revitalization grant funds. Expenditure data will be taken from LOCCS after the application deadline date.

Percent of HOPE VI revitalization grant funds expended	Points deducted
Grants Awarded in FY 1993–2000	
Less than 100	5
Grants Awarded in FY 2001	
90–100	0
80–89	1
75–79	2
70–74	3
65–69	4
Less than 65	5
Grants Awarded in FY 2002	
80–100	0
70–79	1
60–69	2
50–59	3
40–49	4
Less than 40	5
Grants Awarded in FY 2003	
60–100	0
50–59	1
40–49	2
30–39	3
20–29	4
Less than 20	5
Grants Awarded in FY 2004	
25–100	0
20–24	1
15–19	2
10–14	3
5–9	4
Less than 5	5

d. CSS Program Capacity—3 Points

See sections I. and III. of this NOFA for detailed information on CSS activities. Address this Rating Factor through your narrative.

(1) You will receive 2 points if your application demonstrates one of the following. If you fail to demonstrate one of the following, you will receive zero points:

(a) If you propose to carry out your CSS plan in-house and you have recent, quantifiable, successful experience in planning, implementing, and managing the types of CSS activities proposed in your application; or

(b) If you propose that a member(s) of your team will carry out your CSS plan; that this procured team member(s) has recent, quantifiable, successful experience in planning, implementing, and managing the types of CSS activities

proposed in your application; and that you have the capacity to manage that team member, including a plan for promptly hiring staff or procuring this team member.

(2) You will receive 1 point if your application demonstrates one of the following. If you fail to demonstrate one of the following, you will receive zero points:

(a) You have an existing HOPE VI grant and your current CSS team will be adequate to implement a new program, including new or changing programs, without weakening your existing team; or

(b) You do not have an existing HOPE VI Revitalization grant and you demonstrate how your proposed CSS team will be adequate to implement a new program, including new or changing services, without weakening your existing staffing structure.

e. Property Management Capacity—3 Points

Address this Rating Factor through your narrative.

(1) Property management activities may be the responsibility of the PHA or another member of the team, which may include a separate entity that you have procured or will procure to carry out property management activities. In your application you will describe the number of units and the condition of the units currently managed by you or your property manager, your annual budget for those activities, and any awards or recognition that you or your property manager have received.

(2) Past Property Management Experience—2 points.

(a) You will receive 2 points if your application demonstrates that you or your property manager currently have extensive knowledge and recent (within the last 5 years), successful experience in property management of the housing types included in your revitalization plan. This may include market-rate rental housing, public housing, and other affordable housing, including rental units developed with low-income housing tax credit assistance. If your Revitalization plan includes cooperatively owned housing, rent-to-own units, or other types of managed housing, in order to receive the points for this factor, you must demonstrate recent, successful experience in the management of such housing by the relevant member(s) of your team.

(b) You will receive one point if your application demonstrates that you or your property manager has some but not extensive experience of the kind required for your Revitalization plan.

(c) You will receive zero points if your application does not demonstrate that you or your property manager have the experience to manage your proposed plan, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

(3) Property Management Plan—1 point.

(a) You will receive one point if your application describes how you or your property manager will administer the following elements of a property management plan:

- (i) Property maintenance
- (ii) Rent collection
- (iii) Public and Indian Housing Information Center (PIC) 50058 reporting
- (iv) Site-based management experience
- (v) Tenant grievances
- (vi) Evictions
- (vii) Occupancy rate
- (viii) Unit turnaround
- (ix) Preventive maintenance
- (x) Work order completion
- (xi) Project-based budgeting
- (xii) Management of homeownership and rent-to-own programs, if applicable
- (xiii) Energy Audits
- (xiv) Utility/Energy Incentives

(b) You will receive zero points if your application does not describe how you or your property manager will administer all the elements of a property management plan as listed above, or if there is not sufficient information provided to evaluate this factor.

f. PHA or MTW Plan—1 Point

(1) You will receive one point if your application demonstrates that you have incorporated the revitalization plan described in your application into your most recent PHA plan or MTW Annual plan (whether approved by HUD or pending approval). In order to qualify as "incorporated" under this factor, your PHA or MTW plan must indicate the intent to pursue a HOPE VI Revitalization grant and the public housing development for which it is targeted.

(2) You will receive zero points if you have not incorporated the revitalization plan described in your most recent application into your PHA or MTW plan, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

g. Public Housing Assessment System (PHAS)—3 Points

(1) If you have been rated as an Overall High Performer for your most recent PHAS (or successor system)

review as of the application deadline date, you will receive 3 points.

(2) If you have been rated as an Overall Standard Performer for your most recent PHAS (or successor system) review as of the application deadline date, you will receive one point.

(3) If you have been rated as a Troubled Performer that is either Troubled in One Area or Overall Troubled as of the application deadline date, you will receive zero points.

(4) For this rating factor, MTW PHA applicants will be rated on their compliance with their MTW Agreements.

(a) If you are in compliance with your MTW Agreement, you will receive 3 points.

(b) If you are not in compliance with your MTW Agreement, you will receive zero points.

h. Section 8 Management Assessment Program (SEMAP)—3 Points

(1) If you have been rated as a High Performer for your most recent SEMAP (or successor system) rating as of the application deadline date, you will receive 3 points.

(2) If you have been rated as Standard for your most recent SEMAP (or successor system) rating as of the application deadline date, you will receive one point.

(3) If you have been rated as Troubled for your most recent SEMAP rating as of the application deadline date, you will receive zero points.

(4) For this rating factor, MTW PHA applicants will be rated on their compliance with their MTW Agreements.

(a) If you are in compliance with your MTW Agreement, you will receive 3 points.

(b) If you are not in compliance with your MTW Agreement, you will receive zero points.

2. Rating Factor: Need—20 Points Total

a. Severe Physical Distress of the Public Housing Project—6 Points

(1) HUD will evaluate the extent of the severe physical distress of the targeted public housing project. If the targeted units have already been demolished, HUD will evaluate your description of the extent of the severe physical distress of the site as of the day the demolition application was approved by HUD. You will receive points for the following separate subfactors, as indicated.

(a) You will receive up to 2 points if your application demonstrates that there are major deficiencies in the project's infrastructure, including roofs,

electrical, plumbing, heating and cooling, mechanical systems, settlement, and other deficiencies in Housing Quality Standards.

(b) You will receive up to 2 points if your application demonstrates that there are major deficiencies in the project site, including poor soil conditions, inadequate drainage, deteriorated laterals and sewers, and inappropriate topography.

(c) You will receive up to 2 points if your application demonstrates that there are major design deficiencies, including inappropriately high population density, room, and unit size and configurations; isolation; indefensible space; significant utility expenses caused by energy conservation deficiencies that may be documented by an energy audit; and inaccessibility for persons with disabilities with regard to individual units (less than 5 percent of the units are accessible), entranceways, and common areas.

b. Severe Distress of the Surrounding Neighborhood—3 Points

(1) HUD recognizes that public housing projects that meet the criteria of severe distress (as defined in the Definitions section) have a negative impact on their surrounding neighborhood. HUD will evaluate the extent of the distress existing in the surrounding neighborhood, as of the NOFA publication date, in order to identify those public housing development neighborhoods in greatest need. HUD will evaluate this by looking at physical decline of, and disinvestment by, public and private entities in the surrounding neighborhood; crime statistics; poverty levels; socioeconomic data; trends in property values; evidence of property deterioration and abandonment; evidence of underutilization of surrounding properties; indications of neighborhood disinvestment; and photographs of the surrounding neighborhood. This information must be provided by the applicant in their narrative and attachments.

(2) You will receive 3 points if your application demonstrates that the surrounding neighborhood has a severe level of distress, based on the items above. Every item above must be addressed in order to earn full points.

(3) You will receive 2 points if your application demonstrates the surrounding neighborhood has a moderate level of distress, based on the items above.

(4) You will receive zero points if your application does not demonstrate that the surrounding neighborhood is distressed, or if your application does

not address this factor to an extent that makes HUD's rating of this factor possible.

c. Need for HOPE VI Funding—3 Points

(1) HUD will evaluate the extent to which you could undertake the proposed revitalization activities without a HOPE VI grant. Large amounts of available FY 2003 to 2007 Capital Funds (but not Replacement Housing Factor funds (RHF)) for purposes of this NOFA indicate that the revitalization could be carried out without a HOPE VI grant. Available Capital Funds are defined as non-obligated funds that have not been earmarked for other purposes in your PHA or MTW Plan. Funds earmarked in the PHA or MTW Plan for uses other than the revitalization proposed in this application will not be considered as available. Based on the above definition, to determine the amount of available FY 2003 to 2007 Capital Funds, applicants must indicate in their application the dollar amounts in the narrative of their application. See section IV.B. of this NOFA for documentation requirements.

(2) You will receive 3 points if your available Capital Funds balance is up to 20 percent of the amount of HOPE VI funds requested.

(3) You will receive 2 points if your available balance is 21 to 45 percent of the amount of HOPE VI funds requested.

(4) You will receive 1 point if your available balance is 46 to 80 percent of the amount of HOPE VI funds requested.

(5) You will receive zero points if your available balance is more than 80 percent of the amount of HOPE VI funds requested.

d. Need for Affordable Accessible Housing in the Community—3 Points

(1) Your application must demonstrate the need for other housing available and affordable to families receiving tenant-based assistance under Section 8 (HCV), as described below and must be the most recent information available at the time of the application deadline.

(2) For purposes of this factor, the need for affordable housing in the community will be measured by HCV program utilization rates or public housing occupancy rates, whichever of the two reflects the most need. In figuring the HCV utilization rate, determine the percentage of HCV funds expended out of the total amount authorized. In figuring the public housing occupancy rate, provide the percentage of units occupied out of the total in your federal public housing inventory, excluding the targeted public housing site. You should base your

calculation only on the federal public housing units you manage. You may not exclude units in your public housing inventory that are being reserved for relocation needs related to other HOPE VI Revitalization grant(s); or units in your public housing inventory that are being held vacant for uses related to a section 504 voluntary compliance agreement. If you are a non-MTW site, you must use information consistent with the Section Eight Management Assessment Program (SEMAP) and/or the Public Housing Assessment System (PHAS) submissions (or successor systems). If you are an MTW site, and do not report into SEMAP and/or PHAS (or successor systems), you must demonstrate your utilization and/or occupancy rate using similar methods and information sources in order to earn points under this rating factor.

(3) You will receive 3 points if your application demonstrates that the higher of:

- (a) The utilization rate of your HCV program is 97.00 percent or higher; or
- (b) The occupancy rate of your public housing inventory is 97.00 percent or higher.

(c) HUD will use the higher of the two rates to determine your score.

(4) You will receive 2 points if your application demonstrates that the higher of:

- (a) The utilization rate of your HCV program is between 95.00 and 96.99 percent; or,
- (b) The occupancy rate of your public housing inventory is between 95.00 and 96.99 percent.

(c) HUD will use the higher of the two rates to determine your score.

(5) You will receive one point if your application demonstrates that the higher of:

- (a) The utilization rate of your HCV program is between 93.00 and 94.99 percent; or
- (b) The occupancy rate of your public housing inventory is between 93.00 and 94.99 percent.

(c) HUD will use the higher of the two rates to determine your score.

(6) You will receive zero points if both the utilization rate of your Housing Choice Voucher program and the occupancy rate of your public housing inventory are less than 93.00 percent.

3. Rating Factor: Leveraging—16 Points Total

a. Leverage

Although related to match, leverage is strictly a rating factor. Leverage consists of firm commitments of funds and other resources. HUD will rate your application based on the amount of

funds and other resources that will be leveraged by the HOPE VI grant as a percentage of the amount of HOPE VI funds requested. There are four types of Leverage: Development and CSS, as described in the “Program Requirements” in section III.C.3. of this NOFA; Anticipatory and Collateral, as described in this rating factor. Each resource may be used for only one leverage category. Any resource listed in more than one category will be disqualified from all categories. In determining Leverage ratios, HUD will include as Leverage the match amounts that are required by section III.C.2. of this NOFA. Applicants must follow the Program Requirements for Match and Leverage section of section III.C.3. of this NOFA when preparing their leverage documentation. If leverage sources and amounts are not documented in accordance with section III.C.3., they will not be counted toward your leverage amounts.

b. Development Leveraging—7 Points

For each commitment document, HUD will evaluate the strength of commitment and add the amounts that are acceptably documented. HUD will then calculate the ratio of the amount of HUD funds requested to the amount of funds that HUD deems acceptably documented. HUD will round figures to two decimal points, using standard rounding rules. See section III.C.3, Program Requirements, and “Program Requirements That Apply to Match and Leverage” for resource and documentation requirements. These requirements MUST be followed in order to earn points under the leverage rating factor.

(1) You will receive 7 points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS, administration, or relocation) to the dollar value of documented, committed development resources from other sources is 1:3 or higher.

(2) You will receive 6 points if the ratio is between 1:2.50 and 1:2.99.

(3) You will receive 5 points if the ratio is between 1:2.00 and 1:2.49.

(4) You will receive 4 Points if the ratio is between 1:1.50 and 1:1.99.

(5) You will receive 3 points if the ratio is between 1:1.00 and 1:1.49.

(6) You will receive 2 points if the ratio is between 1:0.50 and 1:0.99.

(7) You will receive one point if the ratio is between 1:0.25 and 1:0.49.

(8) You will receive zero points if the ratio is less than 1:0.25, or if your application does not address this factor to an extent that makes HUD’s rating of this factor possible. You will receive 0

points if your application does not request HOPE VI funds for CSS purposes.

c. CSS Leveraging—5 Points

See section III.C.3., Program Requirements, “Program Requirements That Apply to Match and Leverage” for resource and documentation requirements. These requirements MUST be followed in order to earn points under the leverage rating factor.

(1) You will receive 5 points if the ratio of the amount of HOPE VI funds requested for CSS activities to the dollar value of documented, committed CSS resources leveraged from other sources is 1:2 or higher.

(2) You will receive 4 points if the ratio is between 1:1.75 and 1:1.99.

(3) You will receive 3 points if the ratio is between 1:1.50 and 1:1.74.

(4) You will receive 2 points if the ratio is between 1:1.25 and 1:1.49.

(5) You will receive one point if the ratio is between 1:1 and 1:1.24.

(6) You will receive zero points if the ratio is less than 1:1, or if your application does not address this factor to an extent that makes HUD’s rating of this factor possible. You will receive zero points if your application does not request HOPE VI funds for CSS purposes.

d. Anticipatory Resources Leveraging—2 Points

Anticipatory Resources relate to activities that have taken place in the past and that were conducted in direct relation to your proposed HOPE VI Revitalization grant application. In many cases, PHAs, cities, or other entities may have carried out revitalization activities (including demolition) in previous years in anticipation of your receipt of a HOPE VI Revitalization grant. These expenditures, if documented, may be counted as leveraged anticipatory resources. They cannot duplicate any other type of resource and cannot be counted towards match. Other Public Housing funds other than HOPE VI Revitalization, may be included, and will be counted, toward your Anticipatory Resources rating below (see the subparagraph, “Other Public Housing Funds,” in the program requirements section titled “Program Requirements That Apply to Match and Leverage”). For Anticipatory Resources ratios, “HOPE VI funds requested for physical development activities” is defined as your total requested amount of funds minus your requested CSS, administration amounts, and relocation. HUD will presume that your combined CSS, administration, and relocation

amounts are the total of Budget Line Items 1408 (excluding non-CSS Management Improvements), 1410, and 1495 on the form HUD-52825-A, "HOPE VI Budget," that is included in your application. See section III.C.3, Program Requirements, Program Requirements for Match and Leverage for resource and documentation requirements. These requirements MUST be followed as relevant in order to earn points under the leverage rating factor.

(1) You will receive 2 points if the ratio of the amount of HOPE VI funds requested for physical development activities to the amount of your documented anticipatory resources is 1:0.1 or higher.

(2) You will receive zero points if the ratio of the amount of HOPE VI funds requested for physical development activities to the amount of your documented anticipatory resources is less than 1:0.1.

e. Collateral Investment Leveraging—2 Points

Collateral investment includes physical redevelopment activities that are currently underway but will be completed before April 1, 2013; or have yet to begin but are projected to be completed before April 1, 2013. The expected completion time must be addressed in your application. In order for a leverage source to be counted as collateral investment, your application must demonstrate that the related activities will directly enhance the new HOPE VI community, but will occur whether or not a Revitalization grant is awarded to you and the public housing project is revitalized. This includes economic or other kinds of development activities that would have occurred with or without the anticipation of HOPE VI funds. These resources cannot duplicate any other type of resource and cannot be counted as match. Examples of collateral investments include local schools, libraries, subways, light rail stations, improved roads, day care facilities, and medical facilities. See section III.C.3, Program Requirements, and "Program Requirements That Apply to Match and Leverage" for resource and documentation requirements. These requirements MUST be followed as relevant in order to earn points under the leverage rating factor.

(1) You will receive 2 points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is 1:1.0 or higher.

(2) You will receive zero points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is less than 1:1.0.

4. Rating Factor: Resident and Community Involvement—3 Points Total

a. HUD will evaluate the nature, extent, and quality of the resident and community outreach and involvement you have achieved by the time your application is submitted, as well as your plans for continued and additional outreach and involvement beyond the minimum threshold requirements. See section III.C. of this NOFA for Resident and Community Involvement requirements.

b. Resident and Community Involvement—3 Points

You will receive one point for each of the following criteria met in your application, which are over and above the threshold requirements listed in section III.C. of this NOFA.

(1) Your application demonstrates that you have communicated regularly and significantly with affected residents, state and local governments, private service providers, financing entities, developers, and other members of the surrounding community about the development of your revitalization plan by giving residents and community members information about your actions regarding the revitalization plan and providing a forum where residents and community members can contribute recommendations and opinions with regard to the development and implementation of the revitalization plan.

(2) Your application demonstrates your efforts, past and proposed, to make appropriate HUD communications about HOPE VI available to affected residents and other interested parties, e.g., a copy of the NOFA, computer access to the HUD Web site, etc.

(3) Your application demonstrates your plans to provide affected residents with reasonable training on the general principles of development, technical assistance, and capacity building so that they may participate meaningfully in the development and implementation process.

5. Rating Factor: Community and Supportive Services—12 Points Total

a. CSS Program Requirements

See section III.C.3. for CSS program requirements. In your application, you will describe your CSS plan, including

any plans to implement a CSS Endowment Trust. Each of the following subfactors will be rated separately.

b. Case Management—2 Points

(1) You will receive 2 points if your application (including the Logic Model) demonstrates that you are already providing case management services to the targeted residents by this proposal as of the application deadline;

(2) You will receive one point if your application (including the Logic Model) demonstrates that you will be able to provide case management within 30 days from the date of the grant award letter so that residents who will be relocated have time to participate and benefit from CSS activities before leaving the site.

(3) You will receive zero points if your application (including the Logic Model) does not demonstrate either of the above criteria, or if your application does not include sufficient information to be able to evaluate this factor.

c. Needs Assessment and Results—3 Points

(1) You will receive 3 points if your application (including the Logic Model) demonstrates that a comprehensive resident needs assessment has been completed as of the application deadline date and that this needs assessment is the basis for the CSS program proposed in the application. You must describe and quantify the results of the needs assessment.

(2) You will receive up to 2 points if your application (including the Logic Model) demonstrates that a resident needs assessment has been completed as of the application deadline date, but does not show that the needs assessment was comprehensive and clearly linked to the proposed CSS program, and/or does not describe and quantify the results of the needs assessment.

(3) You will receive zero points if your application (including the Logic Model) does not demonstrate any of the above criteria, or if your application does not include sufficient information to be able to evaluate this factor.

d. Transition to Housing Self-Sufficiency—5 Points

You will receive up to 5 points if you address the methods you will use to assist public housing residents in their efforts to transition to other affordable and market-rate housing, i.e., to gain "housing self-sufficiency." Please see section III(C)(3)(l) for information on transition to housing self-sufficiency.

(1) You will receive up to 5 points if your application (including the Logic

Model) demonstrates that your CSS program includes and addresses all three of the below items. Your CSS Program:

(a) Provides measurable outcomes for this endeavor;

(b) Describes in detail how your other CSS and FSS activities relate to the transition of public housing residents to housing self-sufficiency; and

(c) Specifically addresses the grassroots, community-based and faith-based organizations, etc. that will join you in the endeavor.

(2) You will receive up to 2 points if your application (including the Logic Model) demonstrates that your CSS program includes and addresses at least two of the above three items (a) through (c) above.

(3) You will receive zero points if your application (including the Logic Model) demonstrates that your CSS Program includes and addresses less than two of the above items in (a) through (c) above.

e. Quality and Results Orientation in CSS Program—2 Points

(1) You will receive 2 points if you have proposed in your application (including the Logic Model) a comprehensive, high quality, results-oriented CSS program that is based on a case management system and that provides services/programs to meet the needs of all resident groups (e.g., youth, adult, elderly, disabled) targeted by the application. These services/programs may be provided directly or by partners. They must be designed to assist residents affected by the revitalization in transforming their lives and becoming self-sufficient, as relevant.

(2) You will receive up to 1 point if you have proposed in your application (including the Logic Model) a CSS program that meets some but not all of the criteria in the paragraph above;

(3) You will receive zero points if your application (including the Logic Model) does not demonstrate any of the above criteria, or if your application does not include sufficient information to be able to evaluate this factor.

6. Rating Factor: Relocation—5 Points Total

See sections III.C. of this NOFA for Relocation and Relocation Plan requirements. For all applicants, whether you have completed, or have yet to complete, relocation of all residents of the targeted project, your HOPE VI Relocation Plan must include the three goals set out in section 24 of the 1937 Act, as described in sections a.(1), a.(2), and a.(3) below.

a. You will receive up to 5 points for this Factor if you describe thoroughly how your Relocation Plan:

(1) Includes a description of specific activities that have minimized, or will minimize, permanent displacement of residents of the units that will be rehabilitated or demolished in the targeted public housing site, provided that those residents wish to remain in or return to the revitalized community;

(2) Includes a description of specific activities that will give existing residents priority over other families for future occupancy of public housing units in completed HOPE VI Revitalization Development projects, or, for existing residents that can afford to live in non-public housing HOPE VI units, priority for future occupancy of those planned units; and

(3) Includes a description of specific CSS activities that will be provided to residents prior to any relocation;

b. You will receive up to 3 points for this Factor if your Relocation Plan complies with some but not all of the criteria above.

c. You will receive zero points for this Factor if: (1) Your Relocation Plan does not comply with any of the requirements above; or (2) Your application does not provide sufficient information to evaluate this rating factor.

7. Rating Factor: Fair Housing and Equal Opportunity—6 Points Total

a. FHEO Disability Issues—3 Points Total

(1) Accessibility—2 Points.

(a) Over and above the accessibility requirements listed in section III.C.3. of this NOFA, you will receive 2 points if your application demonstrates that you have a detailed plan to:

(i) Provide accessibility in homeownership units (e.g., setting a goal of constructing a percentage of the homeownership units as accessible units for persons with mobility impairments; promising to work with prospective disabled buyers on modifications to be carried out at a buyer's request; exploring design alternatives that result in townhouses that are accessible to persons with disabilities);

(ii) Provide accessible units for all eligible populations ranging from one-bedroom units for non-elderly single persons with disabilities through units in all bedroom sizes to be provided;

(iii) Provide for accessibility modifications, where necessary, to HCV-assisted units of residents who relocate from the targeted project to private or other public housing due to

revitalization activities. The Department has determined that the costs of such modifications are eligible costs under the HOPE VI program;

(iv) Where playgrounds are planned, propose ways to make them accessible to children with disabilities, over and above statutory and regulatory requirements; and

(v) Where possible, design units with accessible front entrances.

(b) You will receive one point if your application demonstrates that you have a detailed plan to implement from one to four of the accessibility priorities stated above, explaining why and how you will implement the identified accessibility priorities.

(c) You will receive zero points if your application does not demonstrate that you have a detailed plan that meets the specifications above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

(2) Universal Design—1 Point. See Section III.C.3 for program requirement information on Universal Design.

(a) You will receive one point if your application demonstrates that you have a specific plan to meet:

(i) The adaptability standards adopted by HUD at 24 CFR 8.3 that apply to those units not otherwise covered by the accessibility requirements. Adaptability is the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. For example, the wiring for visible emergency alarms may be installed so that a unit can be made ready for occupancy by a hearing-impaired person (For information on adaptability, see <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf>); and

(ii) The visitability standards recommended by HUD that apply to units not otherwise covered by the accessibility requirements. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. See <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf> for information on visitability. The two standards of visitability are:

(A) At least one entrance at grade (no steps), approached by a sidewalk; and

(B) The entrance door and all interior passage doors are at least 2 feet, 10 inches wide, allowing 32 inches of clear passage space.

(b) You will receive zero points if your application does not demonstrate that you have specific plans to implement both (i) and (ii) as specified above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

b. Fair Housing and Affirmatively Furthering Fair Housing (AFFH)—1 Point Total

(1) You will receive one Point if, consistent with the General Section, you, the applicant, provide a statement on AFFH that: (a) Describes barriers to fair housing choice in your public housing program and, based on the applicable Analysis of Impediments, in your service area; (b) specifies reasonable activities to address barriers to fair housing choice, such as fair housing counseling, innovative design to make housing and other facilities more accessible for persons with disabilities, or location of replacement housing in areas to afford residents greater mobility and housing choice; and (c) describes how records of AFFH needs and activities will be maintained and accessible to the public and HUD. The statement should also include specific steps you plan to take through your proposed activities to affirmatively further fair housing, such as:

- (i) Working with local jurisdictions to implement their initiatives to affirmatively further fair housing;
- (ii) Implementing, in accordance with Departmental guidance, relocation plans that result in increased housing choice and opportunity for residents affected by HOPE VI revitalization activities funded under this NOFA;
- (iii) Implementing admissions and occupancy policies that are nondiscriminatory and help reduce racial and national origin concentrations; and
- (iv) Initiating other steps to remedy discrimination in housing and promote fair housing rights and fair housing choice.

(2) You will receive zero points if you do not address all of the above issues, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. Economic Opportunities for Low- and Very Low-Income Persons (Section 3)—2 Points

(1) HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C.

1701u) and its implementing regulations at 24 CFR part 135. Specifically, HOPE VI grantees are required to direct all employment training, and contracting opportunities created as a result of proposed project activities to low- and very low-income persons and the business concerns that substantially employ these persons, to the greatest extent feasible. Information about section 3 can be found at HUD's section 3 Web site at <http://www.hud.gov/offices/fheo/section3/section3.cfm>.

(2) Section 3 Plan, 1 Point. You will receive 1 point if your application demonstrates that you have a feasible plan for directing training, employment and contracting opportunities generated by the expenditure of covered financial assistance to Section 3 residents and Section 3 business concerns. To earn the one point, your application must demonstrate that your Section 3 Plan addresses a majority or more of the items listed below in paragraphs (a)–(g). You will receive zero points if your application demonstrates that your Section 3 Plan addresses less than a majority of the items listed below in paragraphs (a)–(g), or if your application does not address this factor to an extent that makes HUD's rating of this factor possible. Feasible Section 3 Plans may include:

- (a) Types and amounts of employment and contracting opportunities to be generated as a result of proposed project activities;
- (b) Specific actions that will be taken to ensure that low- and very low-income persons and the business concerns that substantially employ these person will be given priority consideration for employment and contracting opportunities in accordance with 24 CFR part 135.34 and part 135.36;
- (c) Eligibility criteria to be used for certifying Section 3 residents and business concerns;
- (d) Process to be used for notifying Section 3 residents and business concerns about the availability of training, employment, and contracting opportunities;
- (e) Methodology to be used for monitoring contractors and subcontractors that are awarded covered contracts to ensure their compliance with the requirements of Section 3;
- (f) Strategies for meeting the Section 3 minimum numeric goals for employment and contracting opportunities found at 24 CFR part 135.30;
- (g) Contact information and qualifications for staff persons that will be responsible for the day-to-day implementation of Section 3.

(3) Section 3 Compliance, 1 Point. You will receive 1 point if your application demonstrates compliance with the requirements of Section 3 during the most recent fiscal or calendar year. You will receive zero points if your application does not demonstrate compliance with the requirements of Section 3 during the most recent fiscal or calendar year, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible. Evidence that demonstrates the applicant's current compliance with the requirements of Section 3 may include the following:

(a) A copy of the applicant's most recent Section 3 Annual Summary Report (Form HUD 60002), to be provided in the attachments section; or

(b) A description of efforts that were taken by the applicant to comply with the requirements of Section 3, results achieved (including whether compliance was achieved), and factors that prevented (if compliance was not achieved) the applicant from meeting the minimum numerical goals in 24 CFR 135.30, to be addressed in your narrative.

8. Rating Factor: Well-Functioning Communities—8 Points Total

a. Affordable Housing—Up to 3 Points

(1) Housing Definitions. For the purposes of this rating section, housing units are defined differently than in PIH housing programs, as follows:

(a) "Project-based affordable housing units" are defined as on-site and off-site housing units where there are affordable-housing use restrictions on the unit, e.g., public housing, project-based HCV (Section 8) units, LIHTC units, HOME units, affordable homeownership units, etc. Units already completed, as of the application deadline, may not be counted.

(b) "Public housing" is defined as rental units that will be subject to the ACC.

(2) Unit Mix and Need for Affordable Housing.

(a) Your proposed unit mix should sustain or create more project-based affordable housing units that will be available to persons eligible for public housing in markets where the plan shows there is demand for the maintenance or creation of such units. While it is up to you to determine the unit mix that is appropriate for your site, it is essential that this unit mix include a sufficient amount of public housing rental units and other project-based affordable units. To the extent that the local market shows there is a demand for it, applicants are

encouraged to create additional project-based affordable housing units to be made available for persons eligible for public housing.

(b) For purposes of this factor, HUD will determine whether you need project-based affordable housing by using your HCV program utilization rate or public housing occupancy rate, whichever of the two reflects the least need. In figuring the HCV utilization rate, determine and provide the percentage of HCV funds expended out of the total amount authorized. In figuring the public housing occupancy rate, provide the percentage of units occupied out of the total in your federal public housing inventory, excluding the units in the targeted project. You should base your calculation only on the federal public housing units you manage. You may not exclude units in your public housing inventory that are being reserved for relocation needs related to other HOPE VI Revitalization grant(s); or units in your public housing inventory that are being held vacant for uses related to a section 504 voluntary compliance agreement. If you are a non-MTW site, you must use information consistent with the Section Eight Management Assessment Program (SEMAP) and/or the Public Housing Assessment System (PHAS) submissions (or successor systems). If you are an MTW site, and do not report into SEMAP and/or PHAS (or successor systems), you must demonstrate your utilization and/or occupancy rate using similar methods and information sources in order to earn points under this rating factor.

(3) Scoring when there will be No Need for More Affordable Housing after the Targeted Project is Demolished, if applicable—one point.

(a) You will receive one point for this factor if your application demonstrates that either:

(i) The utilization rate of your HCV program is less than 95.00 percent; or
(ii) The occupancy rate of your public housing inventory is less than 95.00 percent.

(iii) If either (i) or (ii) above is less than 95.00 percent, the other percentage will be disregarded.

(b) If you earn the one point in accordance with section (3) above (“Scoring when there will be No Need for More Affordable Housing after the Targeted Project is Demolished”), then you are not eligible for any points under section (4) below (“Scoring when there Will Be Need for More Affordable Housing After the Targeted Project Is Demolished”).

(4) Scoring when there Will Be Need for More Affordable Housing After the

Targeted Project Is Demolished, if applicable—up to 3 points.

(a) For this factor, HUD considers you in need of project-based affordable housing if both:

(i) The utilization rate of your HCV program is 95.00 percent or more; and
(ii) The occupancy rate of your public housing inventory is 95.00 percent or more.

(iii) If either (i) or (ii) above are less than 95.00 percent, you do not need affordable housing under the terms of this NOFA. You qualify for the one point under section (3) above and are not eligible for any points under this section (4).

(b) The percentages below are defined as the number of planned project-based affordable units divided by the number of public housing units that the targeted project contains or contained;

(c) You will receive 3 points if your application demonstrates that the number of project-based affordable units in your plan is 125.00 percent or more of the number of public housing units that the targeted project contains or contained;

(d) You will receive 2 points if your application demonstrates that the number of project-based affordable units in your plan is 110.00 to 124.99 percent of the number of public housing units that the targeted project contains or contained;

(e) You will receive one point if your application demonstrates that the number of project-based affordable units in your plan is 100.00 to 109.99 percent of the number of public housing units that the targeted project contains or contained.

(f) You will receive zero points if your application demonstrates that the number of project-based affordable units in your plan is less than the number of public housing units that the targeted project contains or contained or if your application does not address this factor to an extent that makes HUD’s rating of this factor possible.

b. Off-Site Housing—1 Point

(1) Factor Background

(a) Although not required, you are encouraged to consider development of replacement housing in locations other than the original severely distressed site (i.e., off-site housing). Locating off-site housing in neighborhoods with low levels of poverty and low concentrations of minorities will provide maximized housing alternatives for low-income residents who are currently on-site and advance the goal of creating desegregated, mixed-income communities. The effect on-site will be to assist in the deconcentration of low-

income residents and increase the number of replacement units.

(b) Although it is acknowledged that off-site housing is not appropriate in some communities, if you do not propose to include off-site housing in your Revitalization plan, you are not eligible to receive this point.

(c) If you propose an off-site housing component in your application, you must be sure to include that component when you discuss other components (e.g., on-site housing, homeownership housing, etc.). Throughout your application, your unit counts and other numerical data must take into account the off-site component.

(2) Scoring. You will receive one point if you propose to develop an off-site housing component(s) and document that: (a) You have site control of the property(ies) in accordance with Section III.C.2 (demonstrate in your narrative and Attachment 18); (b) the site(s) does not suffer from any known or suspected environmental hazards or have any open issues or uncertainties related to public policy factors (such as sewer moratoriums), proper zoning, availability of all necessary utilities, or clouds on title that would preclude development in the requested locality (demonstrate in your narrative); and (c) the site(s) meets site and neighborhood standards, in accordance with Section III.C.3 of this NOFA (demonstrate in your narrative). Units already completed, as of the application deadline, may not be counted.

c. Homeownership Housing—4 Points

The Department has placed the highest priority on increasing homeownership opportunities for low- and moderate-income persons, persons with disabilities, the elderly, minorities, and families where English may be a second language. Too often these individuals and families are shut out of the housing market through no fault of their own. HUD encourages applicants to work aggressively to open up the realm of homeownership.

Homeownership programs/units already completed, as of the application deadline, may not be counted.

(1) Your application will receive 4 points if it demonstrates that your revitalization plan includes homeownership and that you have a feasible, well-defined plan for homeownership. In order to demonstrate this, your application should include descriptions of the following:

(a) The purpose of your homeownership program;

(b) The number of units planned and their location(s);

(c) A description and justification of the families that will be targeted for the program;

(d) The proposed source of your construction and permanent financing of the units; and

(e) A description of the homeownership counseling you or a HUD-approved housing counseling agency will provide to prospective families, including such subjects as the homeownership process, housing in non-impacted areas, credit repair, budgeting, home maintenance, home financing, and mortgage lending.

(2) You will receive 2 points for this factor if you address in your description one to four of the items listed under (1) above.

(3) You will receive zero points for this factor if you do not propose to include homeownership units in your Revitalization plan, if your proposed program is not feasible and well defined, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

9. Rating Factor: Soundness of Approach—30 Points Total

a. Quality and Consistency of the Application—2 Points

(1) The information and strategies described in your application must be well organized, coherent, and internally consistent. Numbers and statistics in your narratives must be consistent with the information provided in the attachments. Also, the physical and CSS aspects of the application must be compatible and coordinated with each other. Pay particular attention to the data provided for:

- (a) Types and numbers of units;
- (b) Budgets;
- (c) Other financial estimates, including sources and uses; and
- (d) Numbers of residents affected.

(2) You will receive 2 points if your application demonstrates a high level of quality and consistency;

(3) You will receive one point if your application has a high level of quality, but contains minor internal discrepancies;

(4) You will receive zero points if your application fails to demonstrate an acceptable level of quality and consistency.

b. Appropriateness and Feasibility of the Plan—5 Points

(1) You will receive 5 points if your application demonstrates the following about your revitalization plan:

(a) It is appropriate and suitable, in the context of the community and other

revitalization options, in accordance with the Appropriateness of Proposal threshold in section III.C. of this NOFA;

(b) Fulfills the needs that your application demonstrated for Rating Factor 2;

(c) Is marketable, in the context of local conditions;

(d) If you include market-rate housing, economic development, or retail structures in your revitalization plan, you must provide a signed letter from an independent, third party, credentialed market research firm, or professional that describes its assessment of the demand and associated pricing structure for the proposed residential units, economic development, or retail structures, based on the market and economic conditions of the project area.

(e) Is financially feasible, as demonstrated in the financial structure(s) proposed in the application;

(f) Does not propose to use public housing funds for non-public housing uses;

(g) If extraordinary site costs have been identified, a certification of these costs has been provided in the application;

(h) Describes the cost controls that will be used in implementing the project, in accordance with the Funding Restrictions and Program Requirements sections of this NOFA;

(i) Includes a completed TDC/Grant Limitations Worksheet in the application and follows the Funding Restrictions and Program Requirements sections of this NOFA.

(2) You will receive 3 points if your application demonstrates some but not all of the criteria above.

(3) You will receive zero points if your application does not demonstrate the criteria above or your application does not provide sufficient information to evaluate this factor.

c. Neighborhood Impact and Sustainability of the Plan—5 Points

(1) You will receive up to 5 points if your application demonstrates your revitalization plan, including plans for retail or office space, or other economic development activities, as appropriate, will:

(a) Result in a revitalized site that will enhance the neighborhood in which the project is located;

(b) Spur outside investment into the surrounding community;

(c) Enhance economic opportunities for residents; and

(d) Remove an impediment to continued redevelopment or start a community-wide revitalization process.

(2) You will receive up to 3 points if your application demonstrates that your

revitalization plan will have only a moderate effect on activities in the surrounding community, as described in (1)(a) through (d) above.

(3) You will receive zero points if your application does not demonstrate that your revitalization plan will have an effect on the surrounding community, as described in (a) through (d) above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

d. Project Readiness—7 Points

HUD places top priority on projects that will be able to commence immediately after grant award. You will receive the following points for each applicable subfactor certified in your application.

(1) You will receive 2 points if the targeted severely distressed public housing site is completely vacant, i.e., all residents have been relocated.

(2) You will receive 2 points if the targeted severely distressed public housing site is cleared, i.e., all buildings are demolished, or your revitalization plan only includes rehabilitation and no demolition of public housing units.

(3) You will receive one point if a Master Development Agreement (MDA) has been developed and is ready to be submitted to HUD. However, in cases where the PHA (not an affiliate/subsidiary/instrumentality) will act as its own developer for all components of the revitalization plan, an MDA is not needed and the one point will be awarded automatically.

(4) You will receive one point if your preliminary site design is complete.

(5) You will receive one point if you have held five or more public planning sessions leading to resident acceptance of the plan.

e. Program Schedule—5 Points

You will receive 5 points if the program schedule provided in your application incorporates all the timelines/milestones required in Section III.C.3.v., "Timeliness of Development Activity," paragraphs (1)–(6). If your schedule does not incorporate all the timelines/milestones, you will earn zero points.

f. Design—3 Points

(1) You will receive up to 3 points if your proposed site plan, new dwelling units, and buildings demonstrate that:

(a) You have proposed a site plan that is compact, pedestrian-friendly, with an interconnected network of streets and public open space;

(b) Your proposed housing, community facilities, and economic

development facilities are thoroughly integrated into the community through the use of local architectural tradition, building scale, grouping of buildings, and design elements; and

(c) Your plan proposes appropriate enhancements of the natural environment that are appropriate to the site's soils and microclimate.

(2) You will receive one point if your proposed site plan, new dwelling units, and buildings demonstrate design that adequately addresses one or two, but not all three of the elements in (1) above.

(3) You will receive zero points if your proposed design is perfunctory or otherwise does not address the elements in (1) above. You will also receive zero points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

g. Energy Star—1 Point

(1) Promotion of Energy Star compliance is a HOPE VI Revitalization program requirement. HUD is encouraging grantees to take specific energy-saving actions in furtherance of HUD's Energy Action Plan described in the August 2006 Report to Congress entitled: "Promoting Energy Efficiency at HUD in a Time of Change," submitted under section 154 of the Energy Policy Act of 2005 (Pub. L. 109-58). (A copy of the report can be obtained at <http://www.huduser.org/publications/destech/energyefficiency.html>.) Also see section III.C.3. of this NOFA.

(2) You will receive one point if your application demonstrates that you will:

(a) Use Energy Star-labeled products;

(b) Promote Energy Star design of replacement units; and

(c) Include Energy Star in homeownership counseling.

(3) You will receive zero points if your application does not demonstrate that you will perform (2)(a) through (c) above.

h. Evaluation—2 Points

You are encouraged to work with your local university(ies), other institutions of learning, foundations, or others to evaluate the performance and impact of your HOPE VI revitalization plan over the life of the grant. The proposed methodology must measure success against goals you set at the outset of your revitalization activities. Evaluators must establish baselines and provide ongoing interim reports that will allow you to make changes as necessary as your project proceeds. Where possible, you are encouraged to form partnerships with Historically Black Colleges and Universities (HBCUs); Hispanic-Serving

Institutions (HSIs); Community Outreach Partnership Centers (COPCs); the Alaskan Native/Native Hawaiian Institution Assisting Communities Program (as appropriate); and others in HUD's University Partnerships Program.

(1) You will receive 2 points if your application includes a letter(s) from an institution(s) of higher learning, foundations, or other organization that specializes in research and evaluation that provides a commitment to work with you to evaluate your program and describes its proposed approach to carry out the evaluation if your application is selected for funding. The letter must provide the extent of the commitment and involvement, the extent to which you and the local institution of higher learning will cooperate, and the proposed approach. The commitment letter must address all of the following areas for evaluation in order to earn full points:

(a) The impact of your HOPE VI effort on the lives of the residents;

(b) The nature and extent of economic development generated in the community;

(c) The effect of the revitalization effort on the surrounding community, including spillover revitalization activities, property values, etc.; and

(d) Your success at integrating the physical and CSS aspects of your strategy.

(2) You will receive zero points if your application does not include a commitment letter that addresses each of the areas above (paragraphs (1)(a)–(d)).

10. Rating Factor: Incentive Criteria on Regulatory Barrier Removal—2 Points Total

a. Description

Applicants must follow the guidance provided in the General Section under section V.B. concerning the Removal of Regulatory Barriers to Affordable Housing in order to earn points under this rating factor. Information from the General Section V.B. is provided below, in part. In FY 2008, HUD continues to make removal of regulatory barriers a policy priority. Through the Department's America's Affordable Communities Initiative, HUD is seeking input into how it can work more effectively with the public and private sectors to remove regulatory barriers to affordable housing. Increasing the affordability of rental and homeownership housing continues to be a high priority of the Department. Addressing these barriers to housing affordability is a necessary component of any overall national housing policy.

Under this policy priority, higher rating points are available to (1) governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing and (2) nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. To obtain the policy priority points for efforts to successfully remove regulatory barriers, applicants must complete form HUD-27300, "Questionnaire for HUD's Initiative on Removal of Regulatory Barriers." Copies of HUD's notices published on this issue can be found on HUD's Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. Form HUD-27300 is included in the electronic application for this program available at http://www.grants.gov/applicants/apply_for_grants.jsp.

b. Scoring

(1) Local jurisdictions and counties/parishes with land use and building regulatory authority applying for funding, as well as PHAs, nonprofit organizations, and other qualified applicants applying for funds for projects located in these jurisdictions, are invited to answer the 20 questions under Part A.

(2) State agencies or departments applying for funding, as well as PHAs, nonprofit organizations, and other qualified applicants applying for funds for projects located in unincorporated areas or areas not otherwise covered in Part A are invited to answer the 15 questions under Part B.

(3) Applicants that will be providing services in multiple jurisdictions may choose to address the questions in either Part A or Part B for that jurisdiction in which the preponderance of services will be performed if an award is made.

(4) In no case will an applicant receive more than 2 points for barrier removal activities under this policy priority.

(5) Under Part A, an applicant that scores at least five in column 2 will receive one point in the NOFA evaluation. An applicant that scores 10 or more in column 2 will receive 2 points in the NOFA evaluation.

(6) Under Part B, an applicant that scores at least four in Column 2 will receive one point in the NOFA evaluation. An applicant that scores eight or greater will receive a total of 2 points in the respective evaluation.

(7) A limited number of questions on form HUD-27300 expressly request the applicant to provide brief documentation with its response. The applicant must do this in order to earn points. Additionally, for every

affirmative statement made (for purposes of the HUD-27300, checking/ selecting a box(es) in column 2 constitutes an "affirmative statement"), the applicant must supply a reference, Internet address, or brief statement indicating where the back-up information may be found and a point of contact, including a telephone number or email address. The applicant must do this in order to earn points. This supporting information may be provided in a separate document file. Applicants that do not provide the supporting information will not get the policy priority points. To obtain an understanding of this policy priority and how it can affect their score, applicants are encouraged to read HUD's three notices, which are available at <http://www.hud.gov/initiatives/affordablecom.cfm>.

B. Reviews and Selection Process

HUD's selection process is designed to ensure that grants are awarded to eligible PHAs that submit the most meritorious applications. HUD will consider the information you submit by the application deadline date. After the application deadline date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you or any third party may want to provide.

1. Application Screening.

a. HUD will screen each application to determine if:

(1) It is deficient, i.e., contains any Technical Deficiencies; and

(2) It meets the threshold criteria listed in section III.C. of this NOFA

b. See section III.C. of this NOFA for case-by-case information regarding thresholds and technical deficiencies. See section IV.B. of this NOFA for documentation requirements that will support threshold compliance and will avoid technical deficiencies.

c. Corrections to Deficient Applications—Cure Period. The subsection entitled, "Corrections to Deficient Applications," in section V.B. of the General Section is incorporated by reference and applies to this NOFA, except that clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 7 calendar days of the date of receipt of the HUD notification. (If the deadline date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.)

d. Applications that will not be rated or ranked. HUD will not rate or rank applications that are deficient at the end

of the cure period stated in section V.B. of the General Section or that have not met the thresholds described in section III.C. of this NOFA. Such applications will not be eligible for funding.

2. Preliminary Rating and Ranking.

a. Rating.

(1) HUD staff will preliminarily rate each eligible application, solely on the basis of the rating factors described in section V.A. of this NOFA.

(2) When rating applications, HUD reviewers will not use any information included in any HOPE VI application submitted in a prior year.

(3) HUD will assign a preliminary score for each rating factor and a preliminary total score for each eligible application.

(4) The maximum number of points for each application is 120.

b. Ranking.

(1) After preliminary review, applications will be ranked in score order.

3. Final Panel Review.

a. A Final Review Panel made up of HUD staff will:

(1) Review the Preliminary Rating and Ranking documentation to:

(a) Ensure that any inconsistencies between preliminary reviewers have been identified and rectified; and

(b) Ensure that the Preliminary Rating and Ranking documentation accurately reflects the contents of the application.

(2) Assign a final score to each application; and

(3) Recommend for selection the most highly rated applications, subject to the amount of available funding, in accordance with the allocation of funds described in section II of this NOFA.

4. HUD reserves the right to make reductions in funding for any ineligible items included in an applicant's proposed budget.

5. In accordance with the FY 2008 HOPE VI appropriation, HUD may not use HOPE VI funds to grant competitive advantage in awards to settle litigation or pay judgments.

6. Tie Scores. If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for the Soundness of Approach Rating Factor. If a tie remains, HUD will select for funding the application(s) with the highest score for the Capacity Rating Factor. HUD will select further tied applications with the highest score for the Need Rating Factor.

7. Remaining Funds

a. HUD reserves the right to reallocate remaining funds from this NOFA to other eligible activities under section 24 of the 1937 Act.

(1) If the total amount of funds requested by all applications found eligible for funding under section V.B. of this NOFA is less than the amount of funds available from this NOFA, all eligible applications will be funded and those funds in excess of the total requested amount will be considered remaining funds.

(2) If the total amount of funds requested by all applications found eligible for funding under this NOFA is greater than the amount of funds available from this NOFA, eligible applications will be funded until the amount of non-awarded funds is less than the amount required to feasibly fund the next eligible application. In this case, the funds that have not been awarded will be considered remaining funds.

8. The following sub-sections of section V. of the General Section are hereby incorporated by reference:

- a. HUD's Strategic Goals;
- b. Policy Priorities;
- c. Threshold Compliance;
- d. Corrections to Deficient Applications;
- e. Rating; and
- f. Ranking.

VI. Award Administration Information

A. Award Notices

1. Initial Announcement

The HUD Reform Act prohibits HUD from notifying you as to whether or not you have been selected to receive a grant until it has announced all grant recipients. If your application has been found to be ineligible or if it did not receive enough points to be funded, you will not be notified until the successful applicants have been notified. HUD will provide written notification to all applicants, whether or not they have been selected for funding.

2. Award Letter

The notice of award letter is signed by the Assistant Secretary for Public and Indian Housing (grants officer) and will be delivered by fax and the U.S. Postal Service.

3. Revitalization Grant Agreement

When you are selected to receive a Revitalization grant, HUD will send you a HOPE VI Revitalization grant agreement, which constitutes the contract between you and HUD to carry out and fund public housing revitalization activities. Both you and HUD will sign the cover sheet of the grant agreement, form HUD-1044. It is effective on the date of HUD's signature, which is the second signature. The grant agreement differs from year to year. Past

Revitalization grant agreements can be found on the HOPE VI Web site at <http://www.hud.gov/hopevi>.

4. Applicant Debriefing

HUD will provide an applicant a copy of the total score received by their application and the score received for each rating factor.

5. General Section References

The following sub-section of section VI.A. of the General Section is hereby incorporated by reference: Adjustments to Funding.

B. Administrative and National Policy Requirements

1. Program Requirements

See the Program Requirements in section III.C.3. of this NOFA for information on HOPE VI program requirements that grantees must follow.

2. Conflict of Interest in Grant Activities

a. *Prohibition.* In addition to the conflict-of-interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of a grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

b. *HUD-Approved Exception.* (1) Standard. HUD may grant an exception to the prohibition above on a case-by-case basis when it determines that such an exception will serve to further the purposes of HOPE VI and its effective and efficient administration.

(2) Procedure. HUD will consider granting an exception only after the grantee has provided a disclosure of the nature of the conflict, accompanied by:

- (a) An assurance that there has been public disclosure of the conflict;
- (b) A description of how the public disclosure was made; and
- (c) An opinion of the grantee's attorney that the interest for which the exception is sought does not violate state or local laws.

(d) Consideration of Relevant Factors. In determining whether to grant a requested exception as discussed, HUD will consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Revitalization plan and demolition activities that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class intended to be the beneficiaries of the Revitalization plan and Demolition plan, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with respect to the specific activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in section (iii) above;

(vi) Whether undue hardship will result either to the grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

3. Salary Limitation for Consultants

FY 2008 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant, whether retained by the federal government or the grantee, at a rate more than the equivalent of General Schedule 15, Step 10 base pay rate for which the annual rate for FY 2008 is \$124,010. The hourly rate is \$57.90.

4. Flood Insurance

In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), your application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

a. The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

b. Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a grant agreement.

5. Coastal Barrier Resources Act

In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), your application may not target properties in the Coastal Barrier Resources System.

6. Policy Requirements

a. OMB Circulars and Administrative Requirements. You must comply with the following administrative requirements related to the expenditure of federal funds. OMB circulars can be found at <http://www.whitehouse.gov/omb/circulars/index.html>. Copies of the OMB circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 20503; telephone (202) 395–7332 (this is not a toll-free number). The Code of Federal Regulations can be found at <http://www.gpoaccess.gov/cfr/index.html>.

(1) Administrative requirements applicable to PHAs are:

(a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed-finance developments.

(b) OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments); and

(c) 24 CFR 85.26 (audit requirements).

(2) Administrative requirements applicable to nonprofit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations);

(b) OMB Circular A–122 (Cost Principles for Nonprofit Organizations); and

(c) 24 CFR 84.26 (audit requirements).

(3) Administrative requirements applicable to for profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations);

(b) 48 CFR part 31 (contract cost principles and procedures); and

(c) 24 CFR 84.26 (audit requirements).

C. Reporting

1. Quarterly Report

a. If you are selected for funding, you must submit a quarterly report to HUD.

(1) HUD will provide training and technical assistance on the filing and submitting of quarterly reports.

(2) Filing of quarterly reports is mandatory for all grantees, and failure to do so within the required timeframe

will result in suspension of grant funds until the report is filed and approved by HUD.

(3) Grantees will be held to the milestones that are reported on the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

(4) Grantees must also report obligations and expenditures in LOCCS, or its successor system, on a quarterly basis.

2. Logic Model Reporting

a. The reporting shall include submission of a completed Logic Model indicating results achieved against the proposed output goal(s) and proposed outcome(s), which you stated in your approved application and agreed upon with HUD. The submission of the Logic Model and required information should be in accord with the reporting timeframes as identified in your grant agreement.

b. The goals and outcomes that you include in the Logic Model should reflect your major activities and accomplishments under the grant. For example, you would include unit construction, demolition, etc., from the "bricks-and-mortar" portion of the grant. As another example, for the CSS portion of the grant, you may include the number of jobs created or the number of families that have reached self-sufficiency, but you would not include information on specific job training and self-sufficiency courses.

c. As a condition of the receipt of financial assistance under this NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors performing HUD-funded research and evaluation studies.

3. Final Report

a. The grantees shall submit a final report, which will include a financial report and a narrative evaluating overall performance against its HOPE VI Revitalization plan. Grantees shall use quantifiable data to measure performance against goals and objectives outlined in its application, as well as against the responses to the Management Questions contained in the Logic Model. The financial report shall contain a summary of all expenditures made from the beginning of the grant agreement to the end of the grant agreement and shall include any unexpended balances.

b. Racial and Ethnic Data. HUD requires that funded recipients collect racial and ethnic beneficiary data. It has adopted the OMB's Standards for the Collection of Racial and Ethnic Data. In view of these requirements, you should

use form HUD-27061, Racial and Ethnic Data Reporting Form (instructions for its use), included in the electronic application for this program available at http://www.grants.gov/applicants/apply_for_grants.jsp, a comparable program form, or a comparable electronic data system for this purpose.

c. The final narrative and financial report shall be due to HUD 90 days after either the full expenditure of funds, or when the grant term expires, whichever comes first.

VII. Agency Contacts

A. Technical Assistance

1. Before the application deadline date, HUD staff will be available to provide you with general guidance and technical assistance. However, HUD staff is not permitted to assist in preparing your application. If you have a question or need a clarification, you may call or send an email message to the Office of Public Housing Investments, Attention: Leigh van Rij, at (202) 402-5788 (this is not a toll-free number), leigh_e._van_rij@hud.gov. The mailing address is: Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410-5000; telephone numbers (202) 401-8812; fax (202) 401-2370 (these are not toll-free numbers). Persons with hearing or speech impairments may access these telephone numbers through a text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877-8339.

2. Frequently Asked Questions and General HOPE VI Information. Before the application deadline date, frequently asked questions (FAQs) on the NOFA will be posted to HUD's grants Web site at <http://www.hud.gov/offices/adm/grants/otherhud.cfm>.

3. You may obtain general information about HUD's HOPE VI programs from HUD's HOPE VI Web site at <http://www.hud.gov/offices/pih/programs/ph/hope6/>.

B. Technical Corrections to the NOFA

1. Technical corrections to this NOFA will be posted on the Grants.gov Web site.

2. Any technical corrections will also be published in the **Federal Register**.

3. You are responsible for monitoring these sites during the application preparation period.

VIII. Other Information.

A. Waivers

Any HOPE VI-funded activities at public housing projects are subject to

statutory requirements applicable to public housing projects under the 1937 Act, other statutes, and the annual contributions contract (ACC). Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed public housing projects. You may request, for the revitalized project, a waiver of HUD regulations, subject to statutory limitations and a finding of good cause under 24 CFR 5.110, if the waiver will permit you to undertake measures that enhance the long-term viability of a project revitalized under this program. HUD will assess each request to determine whether good cause is established to grant the waiver.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made for this notice, in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. eastern time, Monday through Friday, except federal holidays, in the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

C. General Section References

The following sub-sections of section VIII. of the General Section are hereby incorporated by reference:

1. Executive Order 13132, Federalism;
2. Public Access, Documentation, and Disclosure;
3. Section 103 of the HUD Reform Act.

D. Paperwork Reduction Act Statement

The information collection requirements contained in this document have been approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2577-0208. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The public reporting burden for the collection of information is estimated to average 190 hours per annum per

respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, quarterly reports, and final report. The

information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required

in order to receive the benefits to be derived.

[FR Doc. E8-6101 Filed 3-25-08; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

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